

1 **CALIFORNIA PRIVACY PROTECTION AGENCY BOARD**

2  
3 TRANSCRIPTION OF RECORDED PUBLIC MEETING

4  
5 **SEPTEMBER 8, 2023**

6 **OAKLAND, CALIFORNIA**

7  
8 Present: JENNIFER URBAN, Chairperson  
9 LYDIA DE LA TORRE, Board Member  
10 VINHCENT LE, Board Member  
11 ALASTAIR MACTAGGART, Board Member  
12 JEFFREY WORTHE, Board Member  
13 ASHKAN SOLTANI, Executive Director  
14 PHILIP LAIRD, General Counsel  
15 VON CHITAMBIRA, Deputy Director of Administration  
16 MAUREEN MAHONEY, Deputy Director (Policy and  
17 Legislation)  
18 KRISTEN ANDERSON, Attorney  
19 NEELOFER SHAIKH, Attorney  
20 EILEEN JACOBOWITZ, Sorello Solutions  
21 JEANNIE BENOIST, Sorello Solutions  
22 JENNIFER KING, California Children's Data Protection  
23 Working Group Agency Nominee  
24 KEVIN SABO, Moderator

25  
26  
27  
28 Transcribed by: **FOCUS INTERPRETING**

1 CALIFORNIA PRIVACY PROTECTION AGENCY

2 TRANSCRIBED RECORDED PUBLIC MEETING

3 SEPTEMBER 8, 2023

4  
5 MR. KEVIN SABO: ...stabilizing.

6 MS. URBAN: Thank you very much, Mr. Sabo. Good morning,  
7 everyone. Welcome to today's meeting of the California Privacy  
8 Protection Agency Board. It's September 8, 2023, at 9:06am. I'm  
9 Jennifer Urban. I'm the Chairperson of the Board, and I'm pleased  
10 to be here in person with the Board and to welcome many of you via  
11 Zoom as well. Before we get started with the substance of the  
12 meeting, as usual, I have some logistical announcements, and I'd  
13 like to ask for everyone's patience. The hybrid meeting makes  
14 public participation a little bit complex, so it'll take me a  
15 little while to go through it. First, I'd like to ask, everyone,  
16 please check that your microphone is muted when you're not speaking  
17 if that's in a system that you're using. Second, I'd like to ask  
18 everyone who's here in person to turn off or silence their cell  
19 phones and watches etc. to avoid interruption. Third, importantly,  
20 this meeting is being recorded, thank you. With the recent increase  
21 in COVID-19 cases, we are encouraging everyone to wear masks if  
22 you're attending in person. We're not requiring this, just  
23 encouraging it. We want to avoid exposing vulnerable members of the  
24 community or inadvertently making our public meetings less  
25 accessible to them. Our temporary ability to meet remotely and  
26 still comply with Bagley-Keene has expired and not been renewed.  
27 Unfortunately, this could pose some logistical issues to the  
28 Board's work on behalf of the public if a Board member tests

1 positive so, please bear with us in future meetings if that  
2 happens. This brings me to my second related request, which is that  
3 everyone please continue to bear with us with regard to any  
4 technical kinks as we run the meeting. We found that hybrid in-  
5 person and remote meetings can be very complex to administer and  
6 ask for patience. I will have some directions for you who are  
7 attending via Zoom if the remote meeting glitches while we pause to  
8 fix it. I greatly appreciate everybody's presence today and for  
9 bearing with us. Thank you. So, today's meeting will be run  
10 according to the Bagley-Keene Open Meeting Act as required by law.  
11 We will proceed through the agenda which is available as a handout  
12 here in Oakland and also on the CPPA website. Meetings of the--  
13 materials for the meeting, excuse me, are also available as  
14 handouts here and on the CPPA website. You may notice Board members  
15 accessing their laptops, phones, or other devices during the  
16 meeting. They are using those devices solely to access Board  
17 meeting materials. After each agenda item, I will provide an  
18 opportunity for questions and discussion by Board members. I will  
19 also ask for public comment on each agenda item. Please note that  
20 each speaker will be limited to three minutes per agenda item but  
21 that we also have a designated agenda item for general public  
22 comment, agenda item 9 today. If you are attending via Zoom, and  
23 you wish to speak on an item, please wait until I call for public  
24 comment on the item and allow staff to prepare for Zoom public  
25 comment. Then please use the 'Raise Your Hand' function, which  
26 you'll find at the bottom of your Zoom screen and the reaction  
27 feature. If you wish to speak on an item and you are joining by  
28 phone, please press \*9 on your phone and that will show the

1 moderator that you are virtually raising your hand. Our moderator  
2 will call your name when it is your turn and request that you  
3 unmute yourself for comment at that time. Those using the webinar  
4 can use the unmute feature and those dialing in by phone can press  
5 \*6 to unmute. When your comment is completed, the moderator will  
6 mute you. Please do note that the Board will not be able to see  
7 you, only hear your voice. Thus, it is helpful if you identify  
8 yourself, but this is entirely voluntary, and you can also input a  
9 pseudonym when you log into the meeting. If you are attending in  
10 person and wish to speak on an item, please wait for me to call for  
11 public comment and then move toward the podium and form a line.  
12 Please move to the podium when you are called to speak in your  
13 turn. As with Zoom attendees, it is always helpful if you identify  
14 yourself but, again, this is entirely voluntary, and you're free to  
15 refer to yourself with the pseudonym or not to give a name. Please  
16 speak into the microphone so everyone participating remotely can  
17 hear you and so your remarks can be recorded in the meeting record.  
18 As I mentioned, the hybrid meeting format is somewhat complex so  
19 first I'd like to thank the team managing the technical aspects of  
20 the meeting today, Ms. Trini Hurtado, Mr. Oscar Estrella, who have  
21 been stalwarts through two or three of these experiences, and Mr.  
22 Kevin Sabo for dealing with the Zoom moderation, too. Second, I  
23 will explain what to do if you're attending remotely and experience  
24 an issue with the remote meeting, for example, the audio dropping.  
25 If something happens, please email [info@coppa.ca.gov](mailto:info@coppa.ca.gov)-- 'i,' 'n' for  
26 Nancy, 'f' for Frank, 'o,' at c-p-p-a for the Agency dot California  
27 dot gov. This will be monitored throughout the meeting. If there's  
28 an issue that affects the remote meeting, we will pause the meeting

1 to allow our technical staff to work on fixing the issue. With  
2 regard to topics for public comment, the Board welcomes public  
3 comment on any item on the agenda, and it is the Board's intent to  
4 ask for public comment prior to the Board voting on any agenda  
5 item. If, for some reason, I forget to ask for public comment on an  
6 agenda item and you wish to speak on it, please let us know by  
7 using the 'Raise Your Hand' function and the moderator will  
8 recognize you, and if you're in person, of course, just please  
9 raise your hand and let me know that I forgot. You'll be called to  
10 the podium to provide your comment. Please also note, under the  
11 Bagley-Keene Open Meeting Act, both Board members and members of  
12 the public may discuss agendized items only under that agenda item.  
13 And if you're speaking on an agenda item, so you must contain your  
14 comments to that topic. There are two additional options under  
15 Bagley-Keene. First, the public can bring up additional topics when  
16 the Board brings up the agenda item for that purpose, which as I  
17 mentioned is item 9 today. However, Board members cannot respond.  
18 We can only listen. Second, items not on the agenda for today can  
19 be suggested for discussion at future items when the Board takes up  
20 the agenda item designated for that purpose, which is number 10 on  
21 today's agenda. As a final reminder, please remember that you will  
22 have three minutes per agenda item for public comments. We have  
23 quite a full agenda today, so I will be working to move things  
24 along while allowing for robust discussion and hearing from the  
25 public. We will take breaks as needed, including one for lunch. I  
26 will announce each break and either when we plan to return or the  
27 earliest that we would return so that members of the public can  
28 leave and come back, if you wish, before we begin again. Please

1 note that agenda item today, excuse me, agenda item 11 for today is  
2 a closed session item. We will, the Board will take-- we'll leave  
3 the room for that item, and we'll return after we are done with it  
4 either to adjourn or if we take it out of order to continue with  
5 the agenda. My many thanks to the Board members for their service  
6 and being here today and to all the people working to make the  
7 meeting possible. In addition to Ms. Hurtado and Mr. Estrella, I  
8 would like to thank Mr. Philip Laird, who's acting as meeting  
9 counsel today, Mr. Ashkan Soltani, who's here in his capacity as  
10 our executive director, and all of the staff and other folks who  
11 will be briefing us today. I'd also like to welcome our moderator,  
12 Mr. Kevin Sabo, and at this point I'll ask him to please conduct  
13 the roll call.

14 **MR. SABO:** Alright. Board member de la Torre? De la Torre  
15 present. Board member Le?

16 **MR. VINHCENT LE:** Present.

17 **MR. SABO:** Le present. Board member Mactaggart?

18 **MR. ALASTAIR MACTAGGART:** Here.

19 **MR. SABO:** Mactaggart here. Board member Worthe?

20 **MR. JEFFREY WORTHE:** Present.

21 **MR. SABO:** Worthe present. Chair Urban?

22 **MS. URBAN:** Present.

23 **MR. SABO:** Urban present. Madam Chair, you have five present  
24 members and no absences.

25 **MS. URBAN:** Thank you Mr. Sabo. The Board has established a  
26 quorum. I would like to let Board members know we'll be taking a  
27 roll call vote on any action items. And with that, we'll move to  
28 agenda item number 2, which is an update from the chairperson. I

1 have a couple of updates. The first one is just following on from  
2 the last Board meeting in which we discussed legislative proposals,  
3 and the Board unanimously voted in favor of extension of the  
4 Bagley-Keene allowances for remote meetings, and I was asked and  
5 delegated to speak for the Board on that matter. I've published an  
6 op-ed in CalMatters on that, and if anyone would like it, I'm sure  
7 staff would be happy to send it around. I'd like to thank Ms.  
8 Maureen Mahoney and Ms. Megan White for their work on all of the  
9 communications around this. That's one announcement. And secondly,  
10 I am absolutely delighted that our fifth Board seat has been filled  
11 by the governor and to welcome Mr. Jeffrey Worthe to the Board. Mr.  
12 Worthe is the President and Co-Founder of Worthe Real Estate Group  
13 based in Santa Monica. He is a member and past chair of Children's  
14 Hospital Los Angeles Board of Directors. He's a trustee of the UC  
15 Santa Barbara Foundation, a founding member of the UCLA Ziman  
16 Center for Real Estate Board, and a member of the LA Sports and  
17 Entertainment Commission Core Leadership Group. He holds a BA in  
18 Economics from UCSB, so he has deep California ties and a lot of  
19 wonderful service experience for the people of California. I'm just  
20 delighted to have him here and would like to welcome him. Those are  
21 my two announcements. Are there comments or questions from Board  
22 members?

23 **MR. MACTAGGART:** Yeah, I'd just like to echo the welcome to  
24 Jeff. We're so grateful that you've signed up for this, a lot of  
25 work with not a lot of pay, but we appreciate the commitment to  
26 making this state a better place to live.

27 **MS. URBAN:** Thank you, Mr. Mactaggart. Mr. Le, did you gesture?

28 **MR. LE:** I did. Yeah, I'd also want to second the welcome. It's

1 great to have a full Board and, you know, thank you for your  
2 service today and you know going forward. I think we're all glad to  
3 have a full board now.

4 **MS. URBAN:** Thank you, Mr. Le. Ms. de la Torre?

5 **MS. LYDIA DE LA TORRE:** Same thing. Just welcome to the Board.  
6 Delighted to meet you today and looking forward working with you.

7 **MS. URBAN:** Thank you, Ms. de la Torre. And just as a sort of  
8 point of order, please be patient. I will look down the row and  
9 call on you as soon as I see you. It's not a curve very well, so  
10 I'm going to have to work a little bit to do that today. So,  
11 welcome, Mr. Worthe. We're just really happy you're here. Are there  
12 comments from anyone in the audience, either on Zoom or in person?  
13 Any public comments?

14 **MR. SABO:** I'll go to the Zoom. This is for agenda item 2, the  
15 Chairperson's Update. If you'd like to make a comment at this time,  
16 please raise your hand. Again, this is for agenda item 2, the  
17 Chairperson's Update. Madam Chair, I'm not seeing any hands at this  
18 time.

19 **MS. URBAN:** Thank you Mr. Sabo. With that, thanks to everyone  
20 for their comments on this item, and we'll move to agenda item  
21 number 3. Agenda item number 3 is a strategic planning update and  
22 discussion of next steps in the strategic planning process from  
23 Sorello Solutions, the Agency's strategic plan consultants. We  
24 heard about this process in May, I believe it was, and I'd now like  
25 to invite the team from Sorello to brief the Board on the strategic  
26 planning process. I will hand it over to both of you and you just  
27 let us know when you're ready for discussion.

28 **MS. EILEEN JACOBOWITZ:** Just waiting for the slides there.

1           **MS. URBAN:** I'll also remind everyone that these slides are in  
2 the materials for the meeting so if you'd like to turn your  
3 attention to those, now would be a good time.

4           **MR. SABO:** [inaudible]

5           **MS. URBAN:** And to the presenters, could you let us know when  
6 you're moving slide to slide just because we can't see the screen?  
7 Thank you.

8           **MS. JACOBOWITZ:** Yeah, and I'll have to announce that I'm  
9 moving because I'm not moving it, so we'll all see that together.  
10 Alright, there we go. Well, good morning and I hope the Board can  
11 see me given the high podium and the lack of curve there. My name  
12 is Eileen Jacobowitz, and I'm really excited to be here today.  
13 Thank you for the opportunity. I'm with Sorello Solutions, and my  
14 colleague here, Jeannie Benoist, will also be speaking momentarily.  
15 And as you know, in May, the Agency embarked on a strategic  
16 planning process, and in July, we began an environmental scan. And  
17 an environmental scan is an opportunity to understand the current  
18 and future landscape in which the Agency works, in which the Agency  
19 operates. We've conducted, developed, and partnered with many state  
20 agencies and boards to develop strategic plans, and this is the  
21 first step. The first step is to understand the external and  
22 internal environment so you can build your roadmap for the coming  
23 years and how you want to look and the work and your priorities for  
24 the coming years so that's what we did in July. Why don't you go to  
25 the next slide, please? So today, we're sharing our high-level  
26 findings from the strategic plan from the environmental scan. There  
27 are three elements to the environmental scan. First, we spoke  
28 individually in accordance with Bagley-Keene to each of the four

1 seated Board members at the time. We conducted 10 interviews with  
2 the 10 executive staff members, asking similar questions that we  
3 asked of the Board, and then we invited the CPPA staff to submit  
4 responses to an anonymous survey. We received 11 responses to the  
5 staff survey. Next slide, please. So today I'm going to talk  
6 briefly about four high-level categories of findings. The first is  
7 around feedback on your mission statement. The second is feedback  
8 on the current culture of the Agency. Next, is your Agency  
9 strength, opportunities for improvement, trends on the horizon, and  
10 top priorities for the next three years that we heard from all the  
11 respondents. Next slide, please. So first we heard overwhelmingly  
12 from folks that the language in the originating statuette around  
13 your mission seemed right on, and essentially, it reflects the work  
14 you do and your purpose. So, everyone recognize that this is this  
15 is what you do. This is your function. This is why you exist. If  
16 you go to the next slide, you'll see that there are some comments  
17 on maybe some minor tweaks to the mission language, and the Board  
18 will have the opportunity in when we return in November, December,  
19 where we'll provide you a draft strategic plan with your mission,  
20 goals, adjustments etc. that we'll be working on with the Agency  
21 staff and executives. And at that time, if there's any language  
22 changes that the Agency leadership wants to make recommendations  
23 around it in the mission statement, you'll have the opportunity to  
24 comment and bless one way or the other. So, basically, what I'm  
25 saying is we'll be back, and you'll have the opportunity to take a  
26 look at the proposed strategic plan after we've done the work  
27 between here and there. So, next slide, please. So, we asked folks  
28 how they would characterize the CPPA's culture. We asked executive

1 staff that question. We asked the line staff that question. And  
2 overwhelmingly, what we heard from folks is that the culture is  
3 outstanding, that's a very positive culture, folks are very hard  
4 working, very mission-driven, people feel supported. So, overall,  
5 overwhelmingly, we heard great things about the organizational  
6 culture. A couple other comments that we heard; one is, folks are  
7 working really hard so there's a little bit of concern about  
8 burnout. You'll hear in a moment that there's a startup mentality,  
9 which in many ways is fabulous and in many ways, it could lead to  
10 burnout because people are working so hard. We heard from a couple  
11 folks that because the organization is 100-percent remote, the work  
12 is remote, there are a lot of advantages to that, and we heard from  
13 a couple folks that there's some disadvantages when it comes to  
14 communication and connection, something that a lot of organizations  
15 are experiencing right now because in the remote world. Overall,  
16 people appreciate, a lot of folks appreciate the flexibility of the  
17 remote work. Again, really mission-focused team people are here and  
18 are driven by why you exist as an organization, and mistakes are  
19 addressed quickly and directly. There's a lot of nimbleness in the  
20 organization. Next slide, please. So, we asked folks, "What are the  
21 strengths of the Agency?" And here's what we heard. And again, most  
22 of these strengths, you know, all of these things that we heard  
23 repeatedly from a lot of folks. The top strength we heard was about  
24 the caliber and the commitment of the team. You just have high-  
25 quality folks, a lot of expertise. As I said, committed to the  
26 mission and just solid folks you have hired, recruited, retained in  
27 the organization. Another thing people pointed to is your  
28 nimbleness as an organization. Again, because you're new, you're

1 relatively small, there's not any bureaucracy to be mired in,  
2 there's not a lot of old ways that you have to undo, there's a lot  
3 of opportunity to pivot and get things done so a lot of folks  
4 pointed to that as a strength. Next, folks pointed to the  
5 authorities you have in the statute, that statute, that you have a  
6 lot of strength and enforcement tools to do your work. Folks  
7 pointed to the political support you have in the Legislature and  
8 elsewhere. And folks pointed to the open lines of communication in  
9 the organization and that communication is generally solid. You'll  
10 see there's a little bit of discrepancy around that very minor  
11 around, communication, but generally, people feel like  
12 communication is your strength both in the Agency and with your  
13 partners. Next slide. So, some opportunities for improvement. I'm  
14 just going to touch on a few of these. Top thing we heard is a need  
15 for clarifying roles and responsibilities. Again, this comes with  
16 being a new organization. People are still trying to find their  
17 lanes in the Agency, how much autonomy do people have, how much  
18 decision-making authority do they have, etc. We heard that there's  
19 a need for additional staff. So, there's still some vacancies. I  
20 think there still are some but at this time, there was-- there's  
21 vacancies to be filled. There's some areas of expertise that folks  
22 pointed to that you could use in the Agency, including more  
23 technical expertise and some of the skills and knowledge that you  
24 have to outsource for, like contracting, etc. Folks indicated that  
25 there'd be value in bringing some of those skill sets internally.  
26 Again, as part of a new organization, there are not as many  
27 policies, procedures, structures, internal infrastructure that  
28 exists yet. So, folks pointed to a need to mature the organization.

1 No surprise. I think you've been around for a year or so. No  
2 surprise that there's a need for that. Next slide. Communication.  
3 So, the area for opportunity around communication had to do with  
4 getting the word out about your work and that you exist, raising  
5 public awareness about that. And this is the one little difference  
6 we heard between the executive team and staff. And the executive  
7 team did not point to communication as an opportunity for  
8 improvement, but we heard from a few staff that they wish that  
9 there was a little more transparency, they wish there was better  
10 communication across some of the teams. You know, normal things we  
11 hear in a lot of organizations, but there's a little opportunity  
12 there for more communication, maybe more top-down and across. I'll  
13 just point to the number five there. Work-life balance. Again,  
14 because you're in this, you're building, building, building,  
15 moving, moving, moving. There's an opportunity and need for perhaps  
16 prioritizing and just being merely conscious about the work-life  
17 balance. Why don't we move on to the next slide? I want to be  
18 conscious of time here. So, we asked everyone that we spoke to and  
19 in the survey, "What do you see as the trends facing the Agency in  
20 the next three to five years?" And there was a lot of a consensus  
21 around these things as well. The first, as you all know that  
22 there's conversations at the federal level about laws, regulations,  
23 etc. around privacy and might there be something that happens at  
24 the federal level that either undermines or impacts your role.  
25 That's something that people are thinking about. Increased  
26 awareness of privacy issues. You know, this is in the news on  
27 people's minds, especially with AI, children's privacy, etc. The  
28 good news is that people are becoming aware. That might lead to

1 more higher expectations of your work, but generally, people  
2 thought that is a good thing that it's on people's minds. Number  
3 three, the dynamic nature of privacy and technology. We heard from  
4 a lot of folks that it's (A) difficult to get ahead of and maybe  
5 you can't get to as regulators enforcers. It may not make sense to  
6 get too far ahead of things because you don't want to quash the  
7 work and the innovation, but it's just something to be conscious  
8 of, like there's just-- it's such a dynamic industry. And number  
9 four up there is increased recognition from the State Legislature.  
10 Folks we talked to see this generally is a good trend that the  
11 Legislature is seeing you as an important organization to do  
12 important work. Next slide. So, we also ask folks that what they  
13 see as the top priority for the next three years. Of course, we  
14 asked you that as well. And again, consensus around these things.  
15 Finalizing your regulations, successful, impactful, meaningful  
16 enforcement, increasing public awareness and guidance. So, people  
17 understand their rights and everything around privacy. And lastly,  
18 kind of foundationally is building your organizational capacity, so  
19 that you can do all the three things above there. So, I'm going to  
20 stop there, I'm going to invite Jeannie up and she's going to  
21 briefly walk through the next steps with the strategic plan, and  
22 then we'll open up to questions about the process, etc.

23 **MS. JEANNIE BENOIST:** Thank you, Eileen. So next slide, please.  
24 Perfect. So, as Eileen mentioned foundationally, we want to make  
25 sure that we're gathering information around what's going on, what  
26 do we do we need mindful of, and this feeds the process. So, you  
27 can see here, we've broken this effort into phases, and so we've  
28 indicated which ones have been completed. So, phase 1 was our

1 discovery. That was the interviews that we conducted with everyone.  
2 And then we used that information to get together with the  
3 executive team, and we took the data from there. We also conducted  
4 a SWOT analysis, which is a strengths, weaknesses, opportunities  
5 and threats. So, again, kind of part of that environmental scanning  
6 piece. And we took a look at our initial core values. So, we did an  
7 activity to kind of start gathering those. We shared this  
8 presentation that you're seeing with the All-Staff on Wednesday, so  
9 they had an opportunity to see the information. It shows here  
10 refining the core values list. We're going to actually bump that a  
11 little bit so that'll be done at a later time, but we will get  
12 employees' input on that. We have the Board meeting today, and then  
13 at the end of this month, we're going to meet with the executive  
14 team to do part 2 of that kind of planning. So, we'll finalize, or  
15 we'll refine really the goals and objectives for the draft. We'll  
16 prioritize some goals and objectives and identify what we call KPIs  
17 or key performance indicators to help us track progress. And then  
18 for our phase 3 is when we start drafting that plan, and our intent  
19 is to share that draft with you ahead of time and gather your input  
20 on that draft at the November meeting, if obviously that gets  
21 bumped at all. This will shift along with that. Once we get your  
22 feedback, and we refine that plan, it becomes final, and we start  
23 working with Megan and her team to help us socialize it and get it  
24 ready for a publication. That is our overall timeline.

25 **MS. URBAN:** Thank you very much to both of you. So, can you say  
26 a little bit about what would be helpful from us?

27 **MS. BENOIST:** Absolutely. So, when we do share those materials  
28 with you, we would love for you to take a look at them ahead of

1 time. I know everyone has busy schedules, but if you could come to  
2 that November meeting with your feedback. It's going to be intended  
3 to be a working session where we're looking for your input at that  
4 time.

5 **MS. URBAN:** Great, thank you. And then for today, are you  
6 looking for input questions, any questions we have?

7 **MS. BENOIST:** If you have any questions about the process, we  
8 would love to answer those. We're not ready. We want to prepare  
9 that draft for you first before we get your feedback on the actual  
10 content. But you will have an opportunity to do that at the  
11 November session.

12 **MS. URBAN:** Thank you very much.

13 **MS. BENOIST:** Yeah.

14 **MS. URBAN:** Alright, are there comments or questions from Board  
15 members? Ms. de la Torre?

16 **MS. DE LA TORRE:** I think--

17 **MR. LE:** Oh, yeah. I can go first. Yeah, thank you for your  
18 work on this. I'm excited to see the preliminary draft. You know, I  
19 think-- you know, you'll be creating the draft, but you know part  
20 of that is really how do we build on this culture and keep that  
21 strong, you know as time passes, right? We're in a startup  
22 mentality now. What about 10 years down the line? So, you know, I  
23 would appreciate, you know, a lot of thought going into how do we  
24 keep things fresh? How do we avoid the CPPA kind of picking on this  
25 red tape and bloat in bureaucracy that tends to accrue over time?

26 **MS. BENOIST:** Thank you.

27 **MS. URBAN:** Ms. de la Torre?

28 **MS. DE LA TORRE:** Thank you. One question on process. I see the

1 November 8 Board meeting outlined here as part of the steps. Is  
2 there going to be another time where these will come back to the  
3 Board or is just the November 9 meeting and then it doesn't come  
4 back to the Board?

5 **MS. BENOIST:** Great question. Yeah, we will incorporate your  
6 feedback, and then you will have an opportunity to see it again,  
7 and we'll kind of show you what we did with your feedback, what  
8 that looks like. Yeah.

9 **MS. DE LA TORRE:** That would be like the final, but we don't  
10 yet know which Board meeting.

11 **MS. BENOIST:** Sorry. Yeah, we'll have a better time frame as it  
12 gets closer. But yeah, good question. Thank you.

13 **MS. DE LA TORRE:** Perfect. And then I have another question. I  
14 know that the integration of comments was done prior to the latest  
15 appointment, but I was wondering if Mr. Worthe will have an  
16 opportunity to maybe provide the comments that he didn't have an  
17 opportunity to provide. I don't want to get things out of the  
18 rhythm if that will be a problem, but since he has been recently  
19 appointed, if that's possible--

20 **MS. BENOIST:** No, thank you for helping that. I've actually  
21 worked approach, so I'm going to send you another email. I did send  
22 you a request so I know you're probably completely buried, but I  
23 will resend that. I would love to connect with you and get your  
24 thoughts on this. We'll ask you the same questions that we ask the  
25 rest of the Board if you have that time. Yeah. Thank you.

26 **MS. URBAN:** Thank you Ms. de la Torre. More? A couple more?

27 **MS. DE LA TORRE:** One more thing. On the remote work and  
28 communication, I know that you're still working through it. I look

1 forward seeing the solutions that can be brought to bear to make  
2 sure that the staff feels comfortable, that they are receiving the  
3 appropriate communication, that they are dedicating their time in a  
4 way that's productive, because lack of communication can result to  
5 in time that it's not as productive as it could be, so I'm looking  
6 forward to hearing that. And then I have a question that I'm not  
7 sure if it's for you or for Mr. Macko or Mr. Soltani. So, we talked  
8 in the last meeting about having a conversation on priorities for  
9 enforcement, and I'm wondering if that conversation is part of this  
10 plan or maybe it's a different agenda item or how does that--

11 **MS. URBAN:** Ms. de la Torre, are you referring to enforcement  
12 priorities?

13 **MS. DE LA TORRE:** Yeah.

14 **MS. URBAN:** That was moved up to the July meeting because Mr.  
15 Macko was hired, and so he presented on enforcement priorities in  
16 that meeting, but on the annualized calendar, is normally this  
17 meeting.

18 **MS. DE LA TORRE:** Okay. But in that meeting, in the last  
19 meeting, we said that it will come back to the Board to actually  
20 have a granular conversation on what those priorities are, and I  
21 think we talked about maybe sometime the beginning of next year. I  
22 don't need to know the timeline. I was just wondering if that's a  
23 separate item from this report, or is it like a combined thing?

24 **MS. URBAN:** Understood. Okay, so I think the folks from Sorello  
25 should comment on this and correct, but my understanding is a  
26 strategic plan resides at a higher level than that. And so, we've  
27 identified as a group through them that enforcement and having  
28 successful enforcement is part of our strategic plan. And then the

1 specific enforcement priorities would be a discussion that we had  
2 in July, and we will bring back or probably early in the year.

3 **MS. BENOIST:** Yeah, we would agree with that.

4 **MS. URBAN:** Thank you.

5 **MS. DE LA TORRE:** Yeah. Thank you.

6 **MS. URBAN:** Thank you, Ms. de la Torre. Did you have more  
7 comments, Ms. de la Torre or that was it? All right. Wonderful.

8 Thank you. Comments from other Board members or questions?

9 Wonderful, thank you. I would just like to affirm and support the  
10 identification of the need for role, responsibility and sort of  
11 solidifying that to be something that we work on. I think all of us  
12 on the Board, certainly Mr. Le and Ms. de la Torre and myself, have  
13 been here from the beginning. We're very aware of the fact that it  
14 was not just a startup culture, it was in a garage for quite a  
15 while, and there were only us. You know, so we very much recognize  
16 that, you know, we've been building and doing all at the same time  
17 and I'm very proud of the progress that we've made but it is time  
18 to begin to professionalize and solidify a bit. I want to say that  
19 I really appreciate the staff's input and that they were willing to  
20 bring this to our attention and to the executive team's attention,  
21 and I would just like to, for my own part, convey that I think  
22 that's an important piece of the puzzle for you to focus on.

23 **MS. BENOIST:** Great. Thank you.

24 **MS. URBAN:** Anything else from the Board at the moment?

25 Alright, with that, may I ask if there's any public comment? Mr.  
26 Sabo, is anyone on Zoom who would like to make a public comment?

27 **MR. SABO:** Yes, but before that, can I just ask if Board  
28 members can speak more directly into the microphone just for

1 transcription purposes. We want to be sure that it gets picked up  
2 and recorded.

3 **MS. URBAN:** Thank you Mr. Sabo.

4 **MR. SABO:** Yeah, of course, while I had the mic. So, this is  
5 for agenda item 3, the Strategic Planning Update and Next Steps. If  
6 you'd like to speak on this item at this time, please raise your  
7 hand using Zoom's 'Raise Hand' feature by pressing \*6 if you're  
8 joining us by phone. Again, this is for agenda item 3, Strategic  
9 Planning Update and Next Steps. Lisa Gavin, I'm going to unmute you  
10 at this time. You'll have three minutes to make your comment. So,  
11 please begin as soon as you're ready.

12 **MX. LISA GAVIN:** Can you all hear me?

13 **MR. SABO:** Yes, we can. Please go ahead.

14 **MX. GAVIN:** Okay. I actually tried to comment in your last  
15 session, and you all waited very patiently to listen for me to make  
16 my comment, and I was unable to come off of mute correctly, so I  
17 appreciate that, and I apologize. Again, my name is Lisa Gavin, and  
18 I'm General Counsel for a company that is headquartered in Chicago,  
19 Illinois. Part of our business has to do with virtual currency,  
20 otherwise known as cryptocurrency, which also relates directly to a  
21 concept called the blockchain. Without presuming any particular  
22 level of understanding of the Board members with those concepts, I  
23 was wondering whether the strategic planning schedule includes any  
24 further analysis of blockchain technology and virtual currencies,  
25 and whether the Board expects to give any guidance in that regard  
26 to practitioners in this area where certain items of blockchain  
27 technology are not yet addressed in the privacy scheme.

28 **MS. URBAN:** Thank you very much, Lisa Gavin.

1           **MR. SABO:** If there are any other members of the public who'd  
2 like to speak at this time, please go ahead and raise your hand  
3 using Zoom's 'Raise Hand' feature by pressing \*6 if you're joining  
4 us by phone. Again, this is for agenda item 3, Strategic Planning  
5 Update and Next Steps. Madam Chair, I'm not seeing any additional  
6 hands at this time.

7           **MS. URBAN:** Thank you very much. Mr. Sabo. I will give the  
8 Board one more opportunity on this agenda item. Just take a quick  
9 look. No? Thank you. Thank you very much for the presentation and  
10 all the work thus far. We will look forward to seeing the draft  
11 strategic plan when we next meet and into talking through it with  
12 you. Thank you so much.

13           **MS. BENOIST:** Thank you.

14           **MS. URBAN:** Alright. With that, we will turn to agenda item  
15 number 4. Agenda item number 4 relates to the California Children's  
16 Data Protection Working Group and the CPPA's appointment to the  
17 group. On September 15, 2022, Governor Gavin Newsom signed AB 2773,  
18 the California Age-Appropriate Design Code Act. The Act is intended  
19 to strengthen online protections for children under 18. Among other  
20 features, the Act creates the Children's-- California Children's  
21 Data Protection Working Group, which is tasked with making  
22 recommendations on best practices regarding children's access to  
23 online services, products, and features. The working group will be  
24 made up of appointees by the governor, the Senate pro tem, speaker  
25 of the Assembly, the attorney general, and our Agency. In December  
26 2022, the Board delegated authority for the process for the Agency  
27 to the executive director on the understanding that any final  
28 appointee would be approved by the Board. In your materials today,

1 you'll find staff's recommendation of Dr. Jennifer King as the  
2 Agency's appointment to the California Children's Data Protection  
3 Working Group, and I'd like to draw your attention to that memo,  
4 and welcome Maureen Mahoney, our deputy director of policy and  
5 legislation, who will be briefing us on the recommendation today.  
6 Ms. Mahoney, please go ahead.

7 **MS. MAUREEN MAHONEY:** Good morning. Thank you, Chairperson and  
8 members of the Board. I'm pleased to be here today to introduce Dr.  
9 Jennifer King, Privacy and Data Policy Fellow at the Stanford  
10 Institute for Human-Centered Artificial Intelligence. Dr. King is  
11 staff's recommended appointee to the California Children's Data  
12 Protection Working Group. The working group was established by the  
13 California Age-Appropriate Design Code Act. And as you mentioned,  
14 is tasked with preparing legislative recommendations on best  
15 practices regarding children's access to online services, products,  
16 and features. In addition to having expertise in children's data  
17 privacy and computer science, Dr. King has extensive experience in  
18 researching how people interact with and understand technologies  
19 and privacy. For example, she's written and published a number of  
20 articles on dark patterns, which is defined in the CCPA as user  
21 interfaces designed or manipulated with the substantial effect of  
22 subverting or impairing user autonomy, decision-making, or choice.  
23 Dr. King has a master's and doctorate in information management and  
24 systems from the University of California, Berkeley School of  
25 Information. She has experience [inaudible] member of the  
26 California State Advisory Board on Mobile Privacy Policies and  
27 [inaudible] Advisory Board [inaudible] Iridium Product Management.  
28 So, with that, I will turn it over to Dr. King for her brief

1 remarks.

2       **DR. JENNIFER KING:** Hey, good morning, thank you much for  
3 giving me the opportunity for the task again. And I just want to  
4 give a quick couple remarks. First that the California Age-  
5 Appropriate Design Code is really a revolutionary statute, and so  
6 I'm very privileged, feel very privileged to have the opportunity  
7 to potentially weigh in on it. As Maureen stated, I have a  
8 significant background in privacy and specifically computer, human-  
9 computer interaction, which brings to bear on the questions of how  
10 particular user interfaces are created and how they may impact  
11 children specifically on a number of issues. So, I want to just  
12 remind everybody that the core focus of the Age-Appropriate Design  
13 Code was privacy. You know, that was a major component of that law,  
14 and so with 15 years' experience in the privacy field, I'm very  
15 well suited to address those privacy issues. The other, I think,  
16 really interesting part of the bill is the extent to which it's  
17 really seeking to examine the design of algorithmic systems and how  
18 algorithms impact children and again, my interface experience I  
19 think will speak well to that as well as my technical expertise  
20 because I would argue that with algorithmic systems, you have both  
21 the interface and, potentially, the technical design of those  
22 systems. And so, this bill was at least motivated in part by  
23 whistleblower Francis Hogan, who released, you know, years of  
24 documents from Instagram and Facebook. And so, a lot of the  
25 discussion has been on teen mental health and, of course, I think  
26 that is a really obviously important part of what this design code  
27 is attempting to address. But I do want to point out that we need  
28 to consider the impact of these systems not just on teens and

1 mental health and self-image but also questions of income  
2 inequality, questions of how children learn, because I think that's  
3 a very important piece of the puzzle here and we think about these  
4 different systems will be educational technology, for example, not  
5 just social media. And the ways in which these systems are also  
6 potentially contributing to teen violence, which has become a  
7 really important issue, I think, in the last year or two since the  
8 pandemic. So, with that, I will pause and take any questions that  
9 you have. But again, I really appreciate the opportunity and thank  
10 you very much.

11 **MS. URBAN:** Thank you so much Dr. King. For process purposes,  
12 so everyone knows where we're headed, I will be requesting a motion  
13 to approve Agency staff's recommendation of Dr. King to the working  
14 group so just so you know where we are headed. And with that, any  
15 questions or comments for Dr. King? Yes, Ms. de la Torre and then  
16 Mr. Mactaggart?

17 **MS. DE LA TORRE:** I just quickly wanted to say to first thank  
18 Deputy Director Mahoney for the introduction, thanks Dr. King for  
19 being here, but I just wanted to quickly say for those of us who  
20 have been working in privacy for quite a while in the Central  
21 California area, Dr. King needs no introduction. She's well-known,  
22 she's well-respected. We all have admired her career and we  
23 couldn't have done better. So, thank you to the staff for having  
24 been able to convince Dr. King to take up this appointment, and  
25 welcome to the Agency and thank you.

26 **MS. URBAN:** Hear, hear. Thank you, Ms. de la Torre. Mr.  
27 Mactaggart?

28 **MR. MACTAGGART:** Yeah, I just want to say how excited I am and

1 how grateful I am that you have agreed to take this on. From my  
2 perspective, Dr. King, it's not just Northern California, it's  
3 nationally. She's a national expert in this field. She was super  
4 helpful to me gracious when I was just getting going, giving me  
5 some time, her thoughts on privacy, which was very kind of her at  
6 the time and always was a good resource for me to talk to. And I  
7 think, you know, she's really one of the good ones. They're sort of  
8 privacy-lite people who kind of delve in privacy, but then they go  
9 back to industry and she's one of the real ones who's committed to  
10 all the good parts of privacy. So, I just want to say thank you for  
11 doing this.

12 **DR. KING:** Thank you. Appreciate it.

13 **MS. URBAN:** Thank you Mr. Mactaggart. Mr. Le?

14 **MR. LE:** I second that. You know I've read your work. I've seen  
15 you speak before, so I'm very glad and thankful that you're  
16 offering to serve on this working group. I know it can be a  
17 thankless job at times, but I do think California really benefit  
18 from your technical expertise and the working group will benefit  
19 from your expertise as we seek to develop recommendations around  
20 children's data and how we approach that.

21 **DR. KING:** Thanks.

22 **MS. URBAN:** Thank you Mr. Le. Mr. Worth?

23 **MR. WORTHE:** Yeah, I'll pile on as well. I really appreciate  
24 you mentioned the teen mental health aspect, so I think that's a  
25 very important part of what we need to think about. I had a  
26 question before voting, did the Board members meet with Dr. King?

27 **MS. URBAN:** We did not.

28 **DR. KING:** Okay, great. Then I feel comfortable voting. Thank

1 you.

2 **MS. URBAN:** Thank you very much, Mr. Worthe. I will only second  
3 everything that's been said and add two specific of many examples  
4 of my previous experience with Dr. King that I think are salient.  
5 One is many years ago when I was at the law school at Berkeley  
6 where I am now and Dr. King was at the information school, when she  
7 was doing some incredibly creative and far-looking research on how  
8 people use mobile phones, that didn't just survey them that didn't  
9 just do an experimental test of interfaces in a controlled  
10 environment but actually observed how people interacted with their  
11 phones, holding them, and looking at them and what they did. It was  
12 just crucial observational research that shed a lot of light on how  
13 people were thinking about their information and how they were  
14 thinking about their privacy choices. It was foundational. And then  
15 more recently and directly related to the Agency, I'm very grateful  
16 to Dr. King's support of our rulemaking process in 2022 when she  
17 and co-author so generously presented to us on their research on  
18 dark patterns. It was incredibly helpful to the subcommittee, which  
19 I was on, working on those rules and I think to the Board and to  
20 the Agency. So, I really very much appreciate that, and thank Ms.  
21 Mahoney and staff also for persuading you to be considered. We're  
22 delighted to have you here.

23 **DR. KING:** Thank you.

24 **MS. URBAN:** So, I will be asking for the motion I mentioned,  
25 and with that, I would like to ask. Mr. Sabo if there is any public  
26 comment.

27 **MR. SABO:** I believe there are a few hands raised. First, we  
28 have Natalie. Natalie, at this time, I'm going to unmute you.

1 You'll have three minutes to make your comment. So, please begin  
2 whenever you're ready.

3 **MX. NATALIE:** Thank you very much. So, is this an appointment  
4 only or is this as she was stating in detail about looking at  
5 understanding algorithms and a new working group? I ask this  
6 because I'm trying to figure out what the tie-in is to this  
7 specific scope of this Board because I just want to be mindful that  
8 there was money's being paid in order for this Board to exist but  
9 specific to the privacy rules. I'm just trying to figure out what  
10 the scope is that's specific to that.

11 **MS. URBAN:** Thank you Natalie. The California Age-Appropriate  
12 Design Code Act in the Act itself statutorily requires the  
13 development of this working group and statutorily requires that  
14 there be appointments by different appointing authorities,  
15 including the California Privacy Protection Agency. So, we've been  
16 directed by the Legislature to make an appointment to the working  
17 group so that is the sort of legal reason why we are making the  
18 appointment. And as Dr. King mentioned, the age-appropriate design  
19 law has a very large privacy valence, which is core to the Agency's  
20 mission. So, I hope that helps, and thank you for your comment and  
21 question. Mr. Sabo, is there further public comment?

22 **MR. SABO:** Yes, Rocio Baeza. I'm going to unmute you at this  
23 time if you'd like to go ahead and speak. You'll have three minutes  
24 to make your comment.

25 **MX. ROCIO BAEZA:** Did--

26 **MR. SABO:** I can't tell if that was Natalie.

27 **MX. NATALIE:** No, that was not me.

28 **MR. SABO:** Oh, Rocio. Okay, please go ahead whenever you're

1 ready. Rocio? Oh, I have to-- okay, you've been unmuted, please go  
2 ahead whenever you're ready. You'll have three minutes.

3 **MX. BAEZA:** Thank you. My name is Rocio Baeza. I am based in  
4 Chicago and a mom to a 10 year old and a five year old. So, from  
5 putting on my mom hat, I am very pleased to see that an appointment  
6 has been made for the Children's Data Protection Working Group and  
7 Dr. King, so professionally, I am in the data privacy space, have  
8 been for about 15 years as well, specifically focused in the  
9 fintech space, financial services and technology. And I just want  
10 to bring to your attention that I think as you're thinking through  
11 areas of focus for this working group, it would be-- I would ask if  
12 you would consider taking a closer look at how financial  
13 institutions may be using transactional data related to accounts  
14 that are being held by children. This is something that I've been  
15 made aware of because as mom, I'm paying attention to what's being  
16 presented to my kids, and being in the financial services space and  
17 seeing that CCPA does not apply to personal information that is  
18 held by organizations that are subject to GLBA, the California  
19 Financial Information Privacy Act, I think it would be very unwise  
20 if we are looking to improve the data privacy landscape for  
21 everyday Californians with a carve-out to how financial  
22 institutions are managing this as it relates to spending that is  
23 being done by children that are being specifically targeted by U.S.  
24 banks. Thank you for your time and attention.

25 **MS. URBAN:** Thank you very much, Rocio Baeza. Mr. Sabo, is  
26 there any further public comment?

27 **MR. SABO:** Again, this is for agenda item 4, the California  
28 Children's Data Protection Working Group Appointment. If you'd like

1 to speak at this time, please go ahead and raise your hand using  
2 Zoom's raised hand feature or by pressing \*6 on your phone. I  
3 believe it's \*9 actually. \*9 to raise your hand, \*6 to unmute,  
4 Again, this is for agenda item 4. Madam Chair, I'm not seeing any  
5 additional hands at this time.

6 **MS. URBAN:** Thank you Mr. Sabo. In that case, may I have a  
7 motion to approve Agency staff's recommendation to approve the  
8 appointment of Dr. Jennifer King to the California Children's Data  
9 Protection Working Group?

10 **MS. DE LA TORRE:** I move.

11 **MS. URBAN:** Thank you, Ms. de la Torre. May I have a second?

12 **MR. MACTAGGART:** I second.

13 **MS. URBAN:** Thank you, Mr. Mactaggart. I have a motion from Ms.  
14 de la Torre and a second from Mr. Mactaggart. Mr. Sabo, would you  
15 please perform the roll call vote?

16 **MR. SABO:** Yes. The motion is to confirm the appointment. Board  
17 member de la Torre?

18 **MS. DE LA TORRE:** Aye.

19 **MR. SABO:** de la Torre, aye. Board member Le?

20 **MR. LE:** Aye.

21 **MR. SABO:** Le, aye. Board member Mactaggart?

22 **MR. MACTAGGART:** Aye.

23 **MR. SABO:** Mactaggart, aye. Board member Worthe?

24 **MR. WORTHE:** Aye.

25 **MR. SABO:** Worthe, aye. Chair Urban?

26 **MS. URBAN:** Aye.

27 **MR. SABO:** Urban, aye. Madam Chair, you have five ayes and no  
28 noes.

1           **MS. URBAN:** Thank you very much. The motion carries on a vote  
2 from five to zero. Congratulations, Dr. King, and welcome.

3           **DR. KING:** Thank you.

4           **MS. URBAN:** And let's go ahead and swear you in. Do you have  
5 the oath in front of you? It's alright, I'll give you short chunks.

6           **DR. KING:** Okay.

7           **MS. URBAN:** So, you should repeat. Please repeat after me the  
8 oath for the office of a member of the California Children's Data  
9 Protection Working Group. "I, Dr. Jennifer King..."

10          **DR. KING:** I, Dr. Jennifer King..

11          **MS. URBAN:** "...do solemnly swear or affirm..."

12          **DR. KING:** ...do solemnly swear.

13          **MS. URBAN:** "...that I will support and defend the Constitution  
14 of the United States..."

15          **DR. KING:** ...that I will support and defend the Constitution of  
16 the United States...

17          **MS. URBAN:** "...and the Constitution of the State of California..."

18          **DR. KING:** ...and the Constitution of the State of California...

19          **MS. URBAN:** "...against all enemies foreign and domestic..."

20          **DR. KING:** ...against all enemies foreign and domestic...

21          **MS. URBAN:** "...that I will bear true faith and allegiance to the  
22 Constitution of the United States and the Constitution of the State  
23 of California..."

24          **DR. KING:** ...that I will bear true faith and allegiance to the  
25 Constitution of the United States and the Constitution of the State  
26 of California...

27          **MS. URBAN:** "...that I take this obligation freely without any  
28 mental reservation or purpose of evasion..."

1           **DR. KING:** ...that I take this obligation freely without any  
2 mental reservation or purpose of evasion...

3           **MS. URBAN:** "...and that I will well and faithfully...

4           **DR. KING:** ...and that I will well and faithfully...

5           **MS. URBAN:** "...discharge the duties upon which I am about to  
6 enter."

7           **DR. KING:** ...discharge the duties upon which I'm about to enter.

8           **MS. URBAN:** Thank you very much, Dr. King, and welcome.

9           **DR. KING:** Thank you.

10          **MS. URBAN:** If you can bear with us through another agenda  
11 item, then we'll take a break, and we can do the signatures.

12          **DR. KING:** Great, thank you.

13          **MS. URBAN:** Thank you, Dr. King, and thank you to the Board.

14          Yes, Mr. Soltani?

15          **MR. ASHKAN SOLTANI:** Can we just take a short--

16          **MS. URBAN:** A short break now?

17          **MR. SOLTANI:** Yeah.

18          **MS. URBAN:** Of course. Actually, let's take 10 minutes, so  
19 people can move around. So, we will come back at 10:10. Thanks  
20 everyone. Welcome back into the California Privacy Protection  
21 Agency Board meeting for September 8, 2023. We will pick up with  
22 agenda item number 5. Agenda item number 5 is our annual, our first  
23 annual hiring update, including diversity and inclusion metrics.  
24 This has been requested by the Board in previous meetings and was  
25 placed on our annualized calendar in May. So, thank you to everyone  
26 on the staff who's worked on this, and especially to Ms.  
27 Chitambira, our deputy director of administration, for preparing  
28 the update and briefing us. I would also like to remind you to turn

1 your attention to the materials for this agenda item, which  
2 includes some slides. I think Ms. Chitambira is going to show us,  
3 but we can follow along as well. And with that, I will turn it over  
4 to you. Please go ahead.

5 **MS. VON CHITAMBIRA:** Thank you. So, I'll be providing the  
6 hiring updates as of current fiscal year, as well as the fiscal  
7 year that we just closed. Next slide, please. In fiscal year 22-23,  
8 we had authority for 34 positions. At the end of that fiscal year,  
9 55 positions were filled with full-time employees and 74 percent  
10 will be our staffing capacity if we count the limited term  
11 positions. And the reason I separate the two is because typically  
12 CalHR does not count the limited term positions. So, these would be  
13 our retired annuitants and interns so that they're not included in  
14 the staffing level. But in reality, we do have them, and I wanted  
15 to show you exactly what our staffing level was. In the current  
16 fiscal year, July 1, 2023, we received 14 additional positions  
17 through the change process. We are currently hiring for these  
18 positions, including some key positions, the deputy executive  
19 director, the chief auditor, and the enforcement team, which made  
20 up most of those positions. Next slide. So, we're quite proud of  
21 the number of employees we've been able to bring in within the  
22 short timeframe. As you can tell, in the fourth quarter of the  
23 calendar year 2021 is when our first employees were brought in. And  
24 this was before our positions became official. Our authorization to  
25 hire employees was in July 2022. And that's where you see the steep  
26 increase in the number of employees that we brought in. And this is  
27 quite unusual for such a small agency to bring in so many employees  
28 in a short timeframe. Most of those employees were in the Legal

1 Division and they were helping with the rulemaking process. Once we  
2 had those employees, we shifted priorities to hire leadership  
3 positions in the other divisions. And so, you see a slowdown in the  
4 hiring. And that's because CEA positions generally take much longer  
5 to fill. First of all, they are supposed to go to CalHR, where we  
6 show them what the concept of what the positions will be doing. So,  
7 it's a long process to justify what the CEA will be doing, even  
8 though it already has been approved through the BCP process, it's  
9 another layer. And CalHR has 30 days for that. After they approve,  
10 they were able to advertise. We typically advertise for 30 days and  
11 sometimes longer because we're trying to attract the best talent. I  
12 did find out recently for our CEA positions, we've been able to  
13 bring at least maybe 20, 30 people through the interview process.  
14 And some agencies are only getting five people applying. So, we're  
15 doing a good job through the outreach process. We're now in July.  
16 So, we now have positions, the 14 positions. You can expect another  
17 steep increase as we're currently interviewing for a number of  
18 positions at the moment. So, in the next update, you'll see more  
19 positions. Can we move on to the next slide, please? I wanted to  
20 just give you an idea of where we're currently standing in terms of  
21 staffing. And this is based on our full-time positions. I'm not  
22 counting the temporary positions, which are helping us. The Admin  
23 Division was one of the first divisions to be hired, and we're at  
24 100 percent. The Executive Office is currently at 50 percent. It's  
25 a small office. It includes our executive director, the deputy ED  
26 and some support staff. Enforcement Division, as you know, our  
27 enforcement director was hired only two months ago. And we've been  
28 working diligently to hire for this division. We are able to pull

1 positions to help in enforcement from other areas of the division  
2 and bearing in mind the need to maintain that barrier between Legal  
3 and Enforcement. So, we do have help in Enforcement, although the  
4 number looks small at the moment. Legal Division was one of the  
5 second divisions to have staffing as well. So, they're at 80-  
6 percent capacity with only one vacancy, which is currently under  
7 recruitment. Information Technology is another small division. We  
8 are continuing to receive assistance from Department of Consumer  
9 Affairs, and we have our CIO who is now hiring for the positions in  
10 IT. Policy and Legislation is at 33-percent capacity, and Public  
11 and External Affairs is at 30 percent. One thing to point out here  
12 is that attorneys are the hardest to recruit in state service, only  
13 second to cybersecurity experts. So, the two experts that we need  
14 the most, attorneys and cybersecurity, are the hardest to recruit.  
15 There you have it. I will move on now to the workforce analysis. As  
16 Chairman Urban mentioned, this was a request from the Board, but  
17 separate from the Board, California Department of Human Services  
18 require that all state agencies report on their diversity metrics.  
19 And so, I will be going through some of those metrics in the next  
20 slides. As part of the workforce analysis, CalHR captures  
21 information every six months on employee demographics. And some of  
22 this information is voluntary. So, the information that I will be  
23 providing to you is based on what employees have reported out, and  
24 it'll be limited to only 19 employees that we had at the time that  
25 the report was created by CalHR. So, it's not a representation of  
26 our current staffing level, it's based on information that CalHR  
27 has. And we can't give you information based on what we have right  
28 now because we are not allowed to ask employees directly. It's only

1 what they report to CalHR when they're hired. Next slide please.  
2 So, as part of the CalHR process, some of the information that they  
3 expect us to provide is a workforce analysis that explains our  
4 workforce composition. And this is the analysis of significant of  
5 underutilization among racial groups. Indeed, in workforce  
6 composition, you need to have at least 30 employees in each  
7 occupational group, which we don't currently have. And so, we are  
8 not conducting workforce composition analysis to submit to CalHR,  
9 but we are tracking our diversity metrics in-house. And persons  
10 with disabilities is another report that we are supposed to be  
11 conducting and presenting to CalHR. And this one is required for  
12 anyone who has more than two employees. And there's a threshold of  
13 at least 13 percent representation in that category, and we did  
14 meet the threshold. Upward mobility is another aspect for us to  
15 provide, and this identifies employees in entry-level positions.  
16 And the goal here is to have a plan in place to assist those  
17 employees in entry-level positions move up in state service. And if  
18 anyone needs to see information on CPPA, all the data on our  
19 demographics, it is available on our website. And the latest date  
20 is June 30.

21 **MR. SABO:** Okay.

22 **MS. CHITAMBIRA:** The first slide compares demographic data by--  
23 compares the state to the CPPA and this information is comparable.  
24 So, we do have 63 percent representation in females and 37 percent  
25 in males, which is similar to statewide demographics at 66 percent  
26 versus 34. And our information is based on the 19 employees that  
27 were captured by CalHR at the time compared to several thousands of  
28 employees statewide. Next slide, please. The demographic report by

1 occupation. In this report, we only had three occupational groups  
2 that we could compare against. And so, we only compared business,  
3 legal and management. In business operations, we have 26 percent  
4 male representation, which is similar to 28 percent in statewide.  
5 We had 11 percent representation in business operations. This is  
6 lower than average state representation of 57 percent. Again, this  
7 is due to our small size. The Legal Division is 5 percent male,  
8 which is comparable to the state at 3 percent. We do have more  
9 female representation in the legal occupational group at 21 percent  
10 compared to only 5 percent statewide. In management, we are at 21  
11 percent male compared to 3 percent statewide. And female  
12 representation in management, we're at 16 percent, much higher than  
13 state representation at 4 percent. And currently, our numbers of  
14 leadership positions are much higher compared to-- when we compare  
15 leadership positions to rank and file positions, we have a lot more  
16 leadership positions because we're still in the process of hiring  
17 staff. Our strategy was to bring in management first and then fill  
18 the rank and file positions. And so, you may see a decrease in the  
19 representation of management going forward. The next report will be  
20 the ethnicity and race report. We only had four racial groups  
21 represented at the time. This information was captured. Asian  
22 representation for us was 27 percent compared to 16 percent  
23 statewide. And CalHR breaks down the various Asian groups. But for  
24 purposes of this presentation, we just combine them into one.  
25 African American representation for CPPA is 5 percent and that's  
26 comparable to state at 6 percent. Those who identify as multiple  
27 races, we are at 5 percent compared to 40 percent for the state.  
28 Our white representation is much higher for CPPA compared to the

1 state, we're at 63 percent and that is compared to 24 percent  
2 statewide. I wanted to note that when CalHR categorizes whites,  
3 they also include some races that may not be considered white by  
4 the average person. For example, our executive director who is of  
5 Middle Eastern descent is included in the white category. So, there  
6 is a difference in what is on paper and the reality. So, as you can  
7 see, we do have a very diverse workforce, and we are continuing. If  
8 we may move to the next slide, please. And the next one talks about  
9 disability by occupational groups. The descriptions that you see,  
10 disabled, non-disabled, we just used the information based on how  
11 CalHR reports it, and we do have representation for disabled groups  
12 in legal and business management. And compared to the average state  
13 employees, we do have a higher representation of people that report  
14 to have disabilities. And we can move on to the next slide. We are  
15 continuing to recruit diverse employees through CPPA, and we are  
16 leveraging all the outreach resources available to us. We are  
17 partnering with other agencies and using all recruitment resources  
18 available to state employees. We are also focusing on retention as  
19 part of the strategic plan. That'll be one of our areas that we can  
20 work on to make sure that we retain our employees, and we'll  
21 continue to measure diversity and try to recruit across the state  
22 to build on outreach efforts in order to draw a broader spectrum of  
23 experiences and backgrounds. Thank you.

24 **MS. URBAN:** Thank you very much, Ms. Chitambira. Comments or  
25 questions from Board members? Yes, Mr. Mactaggart?

26 **MR. MACTAGGART:** I missed which group we're comparing to when  
27 we say the state, because it can't be like all the police  
28 departments and fire departments. So is it-- which-- I guess, those

1 aren't state employees, but--

2 **MS. CHITAMBIRA:** It is all the state agencies that report under  
3 the CalHR umbrella. And I believe this is including all the  
4 agencies that are under the governor.

5 **MR. MACTAGGART:** So, like CalTrans and everything like that?

6 **MS. CHITAMBIRA:** Yes.

7 **MR. MACTAGGART:** Thank you.

8 **MS. URBAN:** Thank you. Mr. Mactaggart. Other comments or  
9 questions? Yes, Ms. de la Torre.

10 **MS. DE LA TORRE:** I just wanted to thank our deputy director of  
11 administration for preparing this report for us. And I wanted to  
12 mention a couple of things. One, that doesn't show really in this  
13 statistics is the strong commitment that this agency has have from  
14 day one to diversity. We, even when we're interviewing for the  
15 initial roles, we were thinking about diversity. It's important to  
16 the Board. We are fortunate to have an executive director that I  
17 know also takes this to heart. So, it's not in the report, but I  
18 think it's worth pointing out that as an institution, we're  
19 committed to diversity in a state that's diverse. And it's just  
20 something that I value and appreciate being a part of. I had a  
21 couple of questions in, in regards to the statistics that we just  
22 saw, and please feel free to respond to them, you know, with your  
23 knowledge, which goes beyond these statistics, as you mentioned,  
24 they refer to-- they're a little outdated in that they refer to  
25 information that was collected in the past. So, in the ethnicity  
26 and race report, I did notice that we didn't have, in the  
27 statistic, anybody who is Hispanic. That's a community that's  
28 important to the state and is particularly, you know, near to my

1 heart. So, if you could speak a little bit to that and how we think  
2 about evolving in the future. Maybe we already have some employees  
3 that are Hispanic that are not reported. Perhaps we have some  
4 members of our staff. I know somebody who's in this room who speaks  
5 Spanish really well and that, you know, gives accessibility to  
6 those that might want to report, that don't have the ability to  
7 speak English. So, if you could speak a little bit to the efforts  
8 in that space, I will appreciate that. And in the second one was on  
9 the gender statistic. The gender statistic looks really great on  
10 paper, but sometimes it hides a different kind of lack of diversity  
11 when maybe the females in that statistic are not in positions of  
12 leadership. Obviously, I'm looking at a fantastic female  
13 professional who's presented for us, who is in a clear position of  
14 leadership. So, if you could speak a little bit to that kind of how  
15 are we thinking about promoting females to positions of leadership  
16 within the agency? I will appreciate that as well. Thank you.

17 **MS. CHITAMBIRA:** Absolutely.

18 **MS. URBAN:** Yes. Thank you, Ms. de la Torre. Please.

19 **MS. CHITAMBIRA:** In terms of the Hispanic representation in  
20 staffing level in general, so we did have a retired militant who is  
21 Hispanic, but temporary staff was not included in those statistics.  
22 And since the report has been prepared, we do have other Hispanics  
23 now on staff. So, and people who speak fluent Spanish, some of them  
24 not Hispanic. So, we do have enough representation there and we are  
25 continuing to make efforts to make sure we are attracting all the  
26 diverse groups in California. And in leadership, I think we've done  
27 really well as a state agency. In terms of senior leadership  
28 positions, we are almost at 50 percent female and 50 percent male,

1 which is really unusual for any organization in general. So, I  
2 think we've done really well as well in attracting the most  
3 qualified females as well as males to our agency. Thank you.

4 **MS. URBAN:** Thank you. Further comments or questions? All  
5 right. I really-- Oh, I'm sorry, Mr. Le, go ahead.

6 **MR. LE:** Okay. I just wanted to, you know, thank Ms. Chitambira  
7 for putting together this presentation and you know, really for  
8 that huge uptick in hiring that we saw, you know and what was that?  
9 2022? I think it's impressive and I appreciated you sharing during  
10 this report that, you know, the agency is getting, you know, 20  
11 hires for CEA. Well, 20 applicants for CEA positions compared to  
12 five. I think that's a testament to the outreach, but also kind of,  
13 you know, our agency's hiring where we are in state service as a  
14 desirable place to work. So, you know, I just really appreciate  
15 your work on this, and I know the executive director contributes a  
16 lot to that as well. So, thank you for the report.

17 **MS. CHITAMBIRA:** Thank you.

18 **MS. URBAN:** Thank you, Mr. Le. I was simply going to say  
19 something along the lines of what Mr. Le did. I think it's hard to  
20 imagine the many steps and how long it takes to hire in state  
21 service until you have done it. And the growth in this agency just  
22 on that metric alone, or compared to that, is incredibly  
23 impressive. So, my thanks to you and to everybody on the staff, the  
24 executive director and others who've done that. I also share Mr.  
25 Le's sense that we are getting a lot of applicants because we have  
26 a good reputation. This is something I understand about agency  
27 hiring, obviously, we don't pay as much as the private sector, and  
28 the reputation is really important. So, I want to thank everyone

1 for all of the quality that you've shown and the culture that  
2 you've built, because it appears to be paying dividends for us. And  
3 finally, I just want to say I really appreciate the sort of metrics  
4 or, well, the sort of guidelines that you've identified for  
5 continued hiring in including measuring diversity levels and paying  
6 attention to those in order to ensure a broad range of experiences  
7 and perspectives. As Ms. de la Torre said, particularly in a state  
8 of California, although in all states, and for an agency like us,  
9 with a very broad mandate to serve all Californians, to all natural  
10 persons, all businesses who come under our purview, it's just  
11 crucially important that we are able to understand the problems  
12 that are being faced by our constituency across the state of  
13 California. So, I really appreciate the attention to that and the  
14 effort. So, thank you very much. Mr. Sabo, is there any public  
15 comment?

16 **MR. SABO:** This is for agenda item 5, Annual Hiring Update,  
17 including Diversity and Inclusion Metrics. If you would like to  
18 speak on this item at this time, please raise your hand using  
19 Zoom's raise hand feature, by pressing \*9 if you're joining us by  
20 phone today. Again, this is for agenda item five, the annual hiring  
21 update. If you'd like to speak at this time, please go ahead and  
22 raise your hand or press \*9. I'm not seeing any hands.

23 **MS. URBAN:** Thank you very much, Mr. Sabo. With that, thanks to  
24 the Board, thank you again, deputy director. We greatly appreciate  
25 it. And we will turn to agenda item number 6. Agenda item number 6  
26 is a discussion of the Board handbook that you have in your  
27 materials under this agenda item Board handbook collects legal  
28 requirements, policies that we've been working on over time, over

1 the last 18 months or so and understandings of the Board. Please  
2 turn your attention to the memo from Mr. Laird and the handbook for  
3 discussion. I'm going to say just a little bit very briefly about  
4 the reason for collecting things into a handbook and the history of  
5 this. Most boards and commissions have a handbook that serves as a  
6 ready reference to board members and to staff if they need to look  
7 something up related to the board that collects some of the complex  
8 legal requirements that we're all following, and also provides an  
9 understanding of how we have agreed to work together on the Board.  
10 We initially discussed a handbook in our very first meeting and I  
11 think the sort of feeling was that there was a desire for us to get  
12 to know the work, to get to know each other a little bit better, to  
13 consider some of the policies which were drawn from very typical  
14 policies further. So, we have been doing that sort of over time.  
15 And Mr. Laird very kindly, and I realize this must have been a lot  
16 of work, has pulled everything together into a handbook and also  
17 included some topics that we haven't discussed sort of since that  
18 first meeting, which I assume that we might discuss today. And with  
19 that, I will turn it over to Mr. Laird.

20 **MR. PHILIP LAIRD:** Thank you, Chair Urban and members of the  
21 Board. To the point made, I'd be happy to kind of walk the Board  
22 through briefly sort of what I would say is either a legal  
23 requirement or a policy already adopted by the Board, and then  
24 point out those sections that I think specifically are maybe new or  
25 of interest for discussion for the Board. So, specifically,  
26 sections one, two, and three are entirely restatements of law,  
27 except for the per diem policy, which was adopted by the Board in  
28 September of 2021. Section four is also essentially a restatement

1 of law, but also reflects the Board's practice of conducting an  
2 annual review of the executive director. Section five is a  
3 combination of Bagley-Keene rules, a restatement of the Board's use  
4 of an annual calendar, and finally incorporates the Board's  
5 subcommittee policy and criteria. And section seven lists a number  
6 of previously adopted Board policies such as its budget and  
7 legislation policies, and also explains a number of legal  
8 requirements pertaining to subjects like ex parte communications,  
9 honoraria and Public Records Act requests. So, that means what  
10 really remains for Board discussion today is largely what appears  
11 in section six regarding Board member and chair responsibilities,  
12 the Board's practices around public communication and the Board's  
13 travel policy. Additionally, in section seven, there's added an  
14 intergovernmental coordination policy, which does propose a new  
15 practice of having the deputy director of policy and legislation  
16 annually present and receive Board feedback on the agency's  
17 intergovernmental activities and priorities. So, as always, I'm  
18 happy to answer any questions Board members have about the proposed  
19 handbook, but we'll otherwise turn things over to all of you for  
20 discussion and consideration.

21 **MS. URBAN:** Okay, thank you very much, Mr. Laird. I would also  
22 like to highlight that within the section on the travel policy, we  
23 should answer any questions that people have about that. But Ms. de  
24 la Torre, I know, is interested in having a discussion, perhaps Ms.  
25 de la Torre tell us on the annualized calendar of upcoming speaking  
26 engagements, sort of where the agency's going to appear and be able  
27 to have a discussion about when Board members might go, and also  
28 just generally have the Board sort of have a sense of what the

1 agency's doing and where it's going. The reason I mention it is  
2 because anytime we as Board members are traveling for the Board on  
3 agency money, we need to be mindful of for whom we appear to be  
4 speaking. And so, it's tied together with both, like of course we  
5 have to follow the reimbursement policies and so forth of the  
6 state, but it's also tied to some of the guidance related to how  
7 Board members identify themselves and their positions and whether  
8 staff are aware of what we're doing. So, it seemed like a good  
9 place to talk about the sort of agency activities and reports on  
10 those, even though that might not immediately be apparent from some  
11 language about reimbursements. So, I just wanted to highlight that  
12 so that it was on the table and Ms. de la Torre, you knew that that  
13 was open for discussion. Alright. Okay. Questions or comments from  
14 Board members? Yes, Ms. de la Torre?

15 **MS. DE LA TORRE:** So, I went through the document, and I do  
16 have questions. I think that we could take it from the top, maybe,  
17 I don't know, and just go through it or what was the best process?

18 **MS. URBAN:** Well, I would suggest that we skip to the parts  
19 that we haven't already discussed and agreed, or that are just  
20 taken from statutes. And Mr. Laird, I apologize. What section was  
21 that? Where it made sense to--

22 **MR. LAIRD:** Primarily, six and seven.

23 **MS. URBAN:** Primarily six and seven.

24 **MS. DE LA TORRE:** I actually have comments on one, two, three,  
25 and four, and I think five too. Is that not--

26 **MS. URBAN:** Well, most of those are just legal requirements.

27 **MS. DE LA TORRE:** If you allow me to state my comment.

28 **MS. URBAN:** Yes, of course.

1           **MS. DE LA TORRE:** Yeah. So, let's just start at the beginning  
2 then.

3           **MS. URBAN:** Sure. Okay,

4           **MS. DE LA TORRE:** Thank you. So, one question I had is in one  
5 introduction, I was unclear as to why we'll restate the law in a  
6 policy. I'm not used to policies that restate the law. I think  
7 that's kind of, you know, our decision, but if we restate the law  
8 in a policy, what's going to happen is every time the law changes,  
9 we're going to have to potentially reapprove the policy, which  
10 doesn't seem wise. So--

11           **MS. URBAN:** Could we actually talk about that just for a  
12 second? Because I think that's an important sort of process  
13 question, and we might check with Mr. Laird about it. My  
14 understanding of a Board handbook is that it's a ready reference,  
15 so it's something you can take off the shelf and you can refer to  
16 as a ready reference. So, that's why you would restate or, you  
17 know, offer sort of, these are some main laws that we know we need  
18 to be aware of so that we can just check them easily as well as  
19 policies that we've adopted. And then in terms of the process, this  
20 is a question that I've had as well. In the purpose, it does say if  
21 we adopt additional policies in the future, they would be added to  
22 the handbook. So, if Mr. Laird agrees, if this works as a  
23 procedural matter, I believe that if we amend a policy or we adopt  
24 a new policy and we've adopted this language, then you could put  
25 them into the handbook. We don't have to like bring the whole  
26 handbook back to the Board. Is that correct?

27           **MR. LAIRD:** That's correct.

28           **MS. URBAN:** Okay. Does that help, Ms. de la Torre?

1           **MS. DE LA TORRE:** I think that helps. It will be, drafting  
2 wise, it will be, in my mind, better to make it that exhibit and  
3 just say that that exhibit is a restatement of the law and allow  
4 the general counsel to update it. But if we prefer to have it in  
5 the body, it's just, you know, a drafting decision. In authority,  
6 when we talked about Civil Code section 1798.199.10(a), it talks  
7 about the California Privacy Protection Agency Board was  
8 established by California voters. The Agency generally invested  
9 with full administrative power, and then it goes into saying the  
10 Board is expressly authorized to delegate authority to the chair or  
11 the executive director, which is correct. I would like to add there  
12 a little bit more information on how the delegation by the Board  
13 works. I know that we had internal conversations on this. My  
14 understanding is that delegations that are ministerial tasks are  
15 broadly enabled by California law, by the Board, where policy  
16 decision is that that's not delegable except to the executive  
17 director and the chair. This is something that I think all of the  
18 Board members that were part of that conversation are aware of, but  
19 maybe new Board members are not aware of. So, it will be beneficial  
20 to have it included here, so that as our chair mentioned, is a  
21 complete reference for new Board members to get that understanding.

22           **MS. URBAN:** Mr. Laird, would that be possible?

23           **MR. LAIRD:** Yes. Happy--

24           **MS. URBAN:** I think right now it just restates the law and, but  
25 I don't see any reason not to also add a bit of our practice there.

26           **MR. LAIRD:** Sure. In terms of the practice, are you referring  
27 to--

28           **MS. URBAN:** Well, sort of how we've done it, but I think also

1 Ms. de la Torre was referring to the ministerial functions versus  
2 the things that legally can only be delegated in a certain way.

3 **MR. LAIRD:** Yes, we're happy to add that.

4 **MS. URBAN:** Thank you.

5 **MS. DE LA TORRE:** Okay. Thank you. On two, Board administration  
6 and required trainings, I was just wondering, but there's in the  
7 Board trainings, there's a typo. Board members must complete the, I  
8 think it's following required trainings, but there's nothing. So,  
9 when we talked about the Bagley-Keene Open Meeting Act training,  
10 and this was just like a question. It says, provided by the Board  
11 general counsel, three of us were here before the general counsel.  
12 And so, our training was provided, I think, by the AG. Is that  
13 something like we should mention, because--

14 **MS. URBAN:** I don't think so.

15 **MS. DE LA TORRE:** Training from the--

16 **MS. URBAN:** I think this is moving forward, so I think it's  
17 okay, but it's a good catch.

18 **MR. LAIRD:** Well, actually, coincidentally, I think I provided  
19 that training.

20 **MS. URBAN:** I got it from Phil, I'm sure. You weren't our  
21 general counsel at the time though.

22 **MR. LAIRD:** No, no.

23 **MS. DE LA TORRE:** Okay. In four, agency administration, so  
24 Civil Code 1798.199.30, so this is where I was confused. So, we  
25 cite a statute on top, Civil Code 1798.199.30. This paragraph  
26 that's below is not actually the statute. Only the first sentence I  
27 think comes from that Civil Code, and we don't put quotation marks  
28 and we don't make it italicized. So, when I was reading it, I don't

1 think this is what the Civil Code says, and then I went back to the  
2 Civil Code, and I was correct. So, I think only the first sentence,  
3 is it possible Mr. Laird comes from that?

4 **MS. URBAN:** Yeah, I mean--

5 **MS. DE LA TORRE:** And then the executive director is  
6 responsible for the day-to-day operation and integrity of the  
7 Agency and is the official custodian of the records. Where does  
8 that come from? Because it doesn't come from that Civil Code. Maybe  
9 we can be more accurate. The executive director is at-will  
10 employee, correct? So, it is just about making sure that whatever  
11 is a citation from the Civil Code is clearly identified as a  
12 citation. And maybe the other part is a summary, so we could maybe  
13 not, you know, just use quotation marks. Executive director  
14 evaluations, I had a question for the chair and this one Board  
15 members provide information to the chairperson on the executive  
16 director's performance. I don't recall it coming directly to you. I  
17 thought it went to--

18 **MS. URBAN:** So, yeah, there is a process, and you all reviewed  
19 the paperwork for the process and then you brought them to the  
20 meeting. Review and then, yes.

21 **MS. DE LA TORRE:** So, we don't provide it directly to the  
22 chair, I believe.

23 **MS. URBAN:** Well, or maybe not in advance. You provided it to  
24 me in the meeting.

25 **MS. DE LA TORRE:** Right, we shared them in the meeting.

26 **MS. URBAN:** Yeah.

27 **MS. DE LA TORRE:** I just was not-- I was confused about that,  
28 that I just don't want-- I know because of Bagley-Keene, there are

1 things that we have to do in a specific way, so I wouldn't want  
2 Board members to be confused and start sending things directly to  
3 the chair that need to go through somebody else. So, maybe we can  
4 make that a little--

5 **MS. URBAN:** I would suggest just removing "advance."

6 **MS. DE LA TORRE:** Yeah.

7 **MS. URBAN:** "--in advance." Because in addition, of course, Ms.  
8 de la Torre, as, you know, as we grow, our processes change  
9 slightly. And you know, as our HR department grows, for example, we  
10 don't want to accidentally preclude that, but we want to be sure  
11 that the Board is aware that they will be expected to provide  
12 feedback and that we will have a discussion in a closed session.  
13 So, Mr. Laird, would it be okay to work with that?

14 **MR. LAIRD:** I do.

15 **MS. URBAN:** Okay, great. Thank you.

16 **MS. DE LA TORRE:** Okay. Thank you. And then in the executive  
17 director hired by the Board is an exempt position. I believe the  
18 auditor is also an exempt position. Shouldn't the auditor be  
19 mentioned there? This is in 'Agency Staff,' third sentence. The  
20 executive director hired by the Board is an exempt position.  
21 Shouldn't the auditor be mentioned there as well?

22 **MR. LAIRD:** It's to the discretion of the Board if they would  
23 like to include that in the handbook.

24 **MS. URBAN:** I mean, I have no objection. Does anyone have an  
25 objection?

26 **MR. LE:** It is exempt.

27 **MS. DE LA TORRE:** Yeah, that's what I thought. The Board  
28 members may express any staff concerns to the executive director,

1 but I'll refrain from involvement in any civil service matters.  
2 Board members are not to become involved in personal issues in any  
3 of any state employees. I have a little bit of a question here  
4 around, you know, how does this-- what does "civil service matters"  
5 really mean? Is it like a personnel item? And if there was a  
6 situation where that's that specific, hopefully it has never  
7 happened and hopefully it will never happen, but if there was a  
8 matter where a Board member was involved, how will a Board member  
9 not somehow be part of it?

10 **MS. URBAN:** I'll ask Mr. Laird, if you're able to talk a little  
11 bit about the civil service. My understanding is that we have  
12 recourse to the executive director and the executive director-- and  
13 there's a structure in the Agency for employee management, and we  
14 of course review and hire and fire the executive director. There  
15 are some particular sort of limitations around civil service staff  
16 and union contracts, for example. I don't know the details. I don't  
17 know that we need all the details because Ms. de la Torre, correct  
18 me, but I think she's trying to understand sort of the structure,  
19 and then if there were an incident with an employee sort of outside  
20 of the structure, my understanding is that we would talk to the  
21 executive director about that, and in the absence of that as a  
22 path, presumably to you.

23 **MR. LAIRD:** Yeah. Yes, that's correct. I'll do my best to kind  
24 of speak to this issue, although Ms. Chitambira is probably better  
25 versed in exactly the civil service parameters, but I'm not going  
26 to call her up right now. Essentially, lots of concepts of civil  
27 service and the laws around civil service have been sort of  
28 developed really over the history of California, or at least of

1 state government here. And as a result, there are just various  
2 parameters that the chair mentioned that sort of speak to how civil  
3 servants are managed, and in an issue where there was maybe a  
4 personnel issue where some sort of reprimand was necessary. There's  
5 actually a lot of sort of specific requirements that go into sort  
6 of how you can counsel or if needed progressively disciplined civil  
7 servants. And so, this is a very careful process that really has to  
8 be done sort of in conjunction with the HR department as well as  
9 then the direct supervisor. There's also the component of civil  
10 service that really, it's the supervisor who has the authority to  
11 evaluate. And then again, if it was a situation where an employee  
12 needed counseling or potentially some sort of progressive  
13 discipline, this is something that would have to be carried out by  
14 the supervisor first and foremost. So, I think to the point the  
15 chair made are all correct. You know, the entire staff of the  
16 Agency has been hired basically under the executive director and  
17 his authority. And but from that, there's layers of management and  
18 supervision. And so, I hope that sort of answers the question. I  
19 realize it's kind of a--

20 **MS. URBAN:** Well, I'll ask Ms. De la Torre, because I think  
21 there are sort of potential layers to the question. Again, you  
22 know, we were in a garage for a while, you know, with our startup  
23 and we are now moving into the phase of being a Board that  
24 exercises the level of oversight and sort of at the level of  
25 abstraction that a Board normally would. And I think that that  
26 probably contributes to the information that we sort of need to  
27 understand. But I'm not sure which components of the various  
28 questions that could come up here. We may have missed Ms. de la

1 Torre's question, so I will ask her to--

2 **MS. DE LA TORRE:** No, I was just hoping that we could maybe  
3 make it more accessible, the information from the point of view of  
4 a Board member. Like, what are we supposed to do if there's any  
5 situation, report to the executive director, but just a little bit  
6 more guidance. I know Mr. Mactaggart has a comment as well.

7 **MS. URBAN:** Just a moment, Mr. Mactaggart. So, that makes, Mr.  
8 Laird, if I stated the right process, or we could talk about it.  
9 So, Ms. de la Torre, I think makes a very good point for this to be  
10 useful. Let's say, you know, talk to the executive director and  
11 then with a second option, just in case that it's appropriate.  
12 Okay.

13 **MR. LAIRD:** Absolutely.

14 **MS. URBAN:** Thank you.

15 **MS. DE LA TORRE:** And maybe consider if maybe the deputy  
16 director of administration might be also the person in the  
17 alternative, right? So that we don't overburden our executive  
18 director.

19 **MS. URBAN:** Yeah. With leave of the Board, I think I would like  
20 to ask Mr. Laird and Mr. Soltani to put in the correct positions.  
21 Mr. Mactaggart, thank you for being patient.

22 **MR. MACTAGGART:** No, thank you. I just had a comment on the  
23 same topic, and I just thought that the language maybe could just  
24 be restated because I think Mr. de la Torre is correct, by  
25 definition, if we approve a settlement or something happens, we're  
26 going to be involved in a civil service matter. And then I also  
27 didn't like the word of any state employee, just because you can  
28 imagine a world where there is a Board member who has a different

1 civil service engagement out there on some other Board, and all of  
2 a sudden, you're saying you're not going to be involved in any  
3 state employee. So, I just thought that maybe we could just restate  
4 this paragraph a little bit. Thanks.

5 **MS. URBAN:** So, Mr. Mactaggart, maybe restating it in a  
6 positive, more of a positive sense, though if something comes up,  
7 the Board members should do this with the sort of more concrete  
8 information that Ms. de la Torre was asking for. And I think that  
9 it will then-- so that there remains sort of the underlying  
10 guidance maybe without saying shall not become involved, given that  
11 there might be some rare situations, just a little bit of an  
12 explanation, maybe one line that civil service contracts and so  
13 forth have a lot of constraints. Mr. Laird, would that work?

14 **MR. LAIRD:** Yes, I think we can take a crack at that.

15 **MS. URBAN:** Thank you. For the sake of efficiency, I'm just  
16 kind of seeing if I have general assent. Okay. All right, Ms. de la  
17 Torre, please continue.

18 **MS. DE LA TORRE:** Okay. On the executive director section that  
19 we have at the top here, I think it will be helpful to be more  
20 granular on the responsibilities of the executive director because  
21 there's only one sentence. "The executive director is responsible  
22 for the day-to-day operations." Maybe a more granular  
23 identification of the responsibilities of the executive director  
24 will help with some of the-- I think it was part of a prior  
25 presentation, distributing the roles and responsibilities. If we  
26 could think about a more granular way of identifying what those  
27 responsibilities are.

28 **MS. URBAN:** I suggest that we add an exhibit that is the

1 executive director's duty statement and people can refer to it if  
2 they would like. That's quite detailed.

3 **MS. DE LA TORRE:** Yeah, I haven't seen that statement, but if  
4 it's detailed, it should suffice.

5 **MS. URBAN:** Yeah, well, it hasn't been before the Board since  
6 June of 2021, but it's still around.

7 **MS. DE LA TORRE:** Okay. On five, Board Meeting Proceedings, I  
8 had a question on the first citation to study Government Code  
9 11120. Is that Bagley-Keene? Is that what we're citing?

10 **MR. LAIRD:** That is.

11 **MS. DE LA TORRE:** Okay, thank you. On the annual calendar, it  
12 would be helpful if this is a reference book for Board members to  
13 actually include the calendar. Here says, it was approved and-- in  
14 a date. But if we actually could reproduce the calendar here, it  
15 would be a useful reference on what happens in what meeting.

16 **MS. URBAN:** I would suggest we maybe add a link if the link  
17 could be persistent. Because if we want to, for example, add to the  
18 annualized calendar a discussion of where the Agency's going to  
19 appear over the next year, we don't want to have to put it all into  
20 the handbook again. So, would that, would that work?

21 **MS. DE LA TORRE:** I think that we said the opposite when we're  
22 talking about the citations to the law, right? Like, if the  
23 citation change, it can be changed. I just want to-- I sometimes  
24 struggle with finding things that we agreed upon because there is  
25 no minutes book. So, if we had here, like there's six meetings and  
26 they're supposed to happen in these days, and this is in general  
27 what we are going to talk about, I will personally find it useful  
28 even understanding that's a reference and that can be changed,

1 which I think the section states.

2 **MS. URBAN:** Yes, I was just saying we could do that through a  
3 link that you could click on and bring it up, just because we'll  
4 probably add things to the annualized calendar over time.

5 **MR. LE:** The middle ground is maybe we just do both, right? And  
6 just this generally can be the calendar and then the updated will  
7 be the link.

8 **MS. URBAN:** That's what I was thinking.

9 **MR. LE:** Yeah.

10 **MS. DE LA TORRE:** That sounds great.

11 **MS. URBAN:** Okay. Thank you.

12 **MS. DE LA TORRE:** On the meeting agendas, and this is something  
13 that I think we had a conversation about in the past where we never  
14 really came to a decision. I have been a proponent of the idea that  
15 requests for calendaring by two members of the Board should be  
16 honored in the next meeting. And I would love to add that language  
17 here just to make sure that when two Board members have an interest  
18 in discussing a topic that is calendar appropriately, I just can  
19 open it for a conversation. I know that, you know, different  
20 members might have different preferences. I understand the need to  
21 have the chair identify, you know, what fits in an agenda for a  
22 particular day. But I also think it's important to consider whether  
23 the rest of the Board can be confident that when there is enough  
24 support for an item, that item is part of the conversation that we  
25 are going to be able to have.

26 **MS. URBAN:** Alright, so thoughts on that. We have not yet had  
27 an agenda item that didn't make it onto the calendar. At some  
28 point--

1           **MS. DE LA TORRE:** Actually, I remember having several requests  
2 that would--

3           **MS. URBAN:** There was one that we ended up-- I was planning to  
4 put it on the calendar, but I withdrew it. But it could go on a  
5 future calendar. Obviously, you know, I find it most efficient to  
6 be able to allocate time on an agenda when there's a space on the  
7 agenda and it seems to make sense with the conversation. The very  
8 next meeting may not be that meeting. Again, we've not had any sort  
9 of subject matter conflicts in any way, and it's been pretty  
10 straightforward to just agendize things that people ask for. But I  
11 would be very grateful to hear any other thoughts. Yes, Mr.  
12 Mactaggart?

13           **MR. MACTAGGART:** Sure. I think just because I don't think it's  
14 been a huge problem, I don't think adding it would be a huge  
15 problem in terms of the future flexibility, I think. I do like the  
16 notion that if something's urgent enough and gets enough support,  
17 then two people-- so I would support Ms. de la Torre's comment  
18 there. Also, my comment on this particular paragraph had been, I  
19 didn't like the wording to the extent possible, the chairperson  
20 will calendar, each Board member's request, because I think if a  
21 Board member brings something up, it should be heard. I mean,  
22 that's why we're here. And so, you don't want to be in a situation  
23 that, I know it wouldn't happen with you because you've been a very  
24 fair chair, but you could imagine a situation where a chair just  
25 said, I'm not going to hear somebody's, a Board member's concern.  
26 So, I would like to remove to the extent possible language there.

27           **MS. URBAN:** So, I think that that might be necessary, because  
28 it is possible for, and this may even have come up at some point,

1 that there could be in, in good faith, an agenda item that  
2 suggested that would pose problems under Bagley-Keene or would pose  
3 some other legal issue. I mean, we could amend it to refer to legal  
4 issues or something if you'd be more comfortable with that. But I  
5 don't think that it would be wise to say "shall" just because we  
6 then might end up inadvertently talking about something that wasn't  
7 appropriate or wasn't sort of legally permissible.

8 **MR. MACTAGGART:** I'd be fine with that. I just didn't want to  
9 have, leave it open to where it's sort of at the discretion. I  
10 think that the reason we have different appointing authorities is  
11 so that we can have different points of view. So, I'd like to have-  
12 -

13 **MS. URBAN:** Thank you Mr. Mactaggart. Are there any other  
14 thoughts on this?

15 **MR. WORTHE:** I just want to clarify.

16 **MS. URBAN:** Mr. Worthe?

17 **MR. WORTHE:** [inaudible] point that it would be future meeting  
18 that language would remain, not the next meeting? You had raised  
19 that because I think the--

20 **MS. URBAN:** So yeah, I think there are two components. And I'll  
21 ask Ms. de la Torre and Mr. Mactaggart to let me know if I get this  
22 wrong. One is whether there is sufficient support on the Board. So,  
23 Ms. de la Torre suggested two members to put something on the  
24 agenda. In that case, the chair would be unnoticed that it needs to  
25 go on the agenda. And then the second component of that is the  
26 timing. And that, you know, we could certainly try it in the next  
27 meeting. I just worry a little bit that sometimes it's two meetings  
28 down when it's the most appropriate. And I would prefer, to have

1 that level of discretion, and I think it would make the work of the  
2 Board more efficient. I do take Mr. Mactaggart's point that the  
3 chair is an abstract concept, not an individual person. But as the  
4 embodiment of that abstract concept right now, that's been sort of  
5 my experience with trying to calendar items for Board members.

6 **MS. DE LA TORRE:** I think when I suggested that when an item is  
7 brought forward by two members, it should be on the calendar, I am,  
8 aware of the need for flexibility. I mentioned that. So, if it  
9 doesn't happen in the next Board meeting because there's a need for  
10 additional time, so long as the chair or the general counsel go  
11 back to the two members and explain why that was not possible and  
12 explain when it's going to be calendar, I see that reasonable. Same  
13 thing for obviously the comment that the chair made around if  
14 something is illegal to me, that's not something that's necessarily  
15 a decision of the chair. I think that's running it by our general  
16 counsel. And if there is any situation where something shouldn't be  
17 calendar, it shouldn't be calendar. And then, but with the same  
18 feedback to the Board member that has presented that request in  
19 terms of we cannot calendar these for these reasons, that will  
20 enable the Board member to maybe rethink their calendar request and  
21 make it more amenable to whatever is it that the law is  
22 prohibiting, so that we can give that person the opportunity to  
23 restate the request and have the conversation as Mr. Mactaggart was  
24 mentioning.

25 **MS. URBAN:** Thank you, Ms. de la Torre. Matter of grammar, I  
26 think we're back to "the extent possible." But Mr. Laird, going  
27 back to Mr. Mactaggart's thinking and combined with Ms. de la  
28 Torre's, do you think that it would be pretty straightforward to

1 come up with a revision to the sentence that sort of encapsulates  
2 this idea? I mean, there may be inadvertently a Board member might  
3 suggest something that isn't appropriate for a Board conversation,  
4 but otherwise, the chair, of course, I will say as the embodiment  
5 of the chair at the moment, I of course, will calendar it. And you  
6 know, I think it probably makes sense that we would have an  
7 expectation that maybe you or someone would talk to the Board  
8 member Board to explain if it were inappropriate. And as Ms. de la  
9 Torre said, they could amend it. I don't know that it makes sense  
10 to try to put all of that in the Board handbook. Maybe the way to  
11 handle it would be, again, as Ms. de la Torre's good suggestion  
12 with regards to how to talk about personnel issues, would be to  
13 just sort of set out, offering agenda items either during the  
14 agenda item in a Board meeting, to me directly, to Mr. Soltani  
15 directly, and just so people know what to do, rather than trying to  
16 like, go into all of this detail about if it were inappropriate or  
17 illegal, and staff would go back and talk to the-- yes, Mr.  
18 Mactaggart, do you have an idea?

19 **MR. MACTAGGART:** Well, I have a suggestion, which may or may  
20 not work, but you know, could you also, would you be okay with  
21 saying something like saying if two people bring it up, it's going  
22 to be at the next one or the one after that gives you some  
23 flexibility, the next one, one of the next two meetings, that way  
24 at least, you know, you're not going to get never heard.

25 **MS. DE LA TORRE:** Right. Right. Or, you know--

26 **MS. URBAN:** No. Yes, I think Ms. de la Torre said she was okay  
27 with the flexibility on the timing. We were talking about having an  
28 opportunity for a Board member who'd suggested something that

1 wouldn't work for a Board conversation, be able to reformulate or  
2 limit it in some way so that it was appropriate for a Board  
3 conversation. That's what I understood you to be saying, Ms. de la  
4 Torre. No?

5 **MS. DE LA TORRE:** I'm not sure I understand what you mean right  
6 now.

7 **MR. LE:** I think what we're all trying to say here is how do we  
8 replace "to the extent possible," while creating exceptions for an  
9 explanation to the Board members why it's not possible, and to  
10 state that, you know, if it's illegal or prohibited by Bagley-  
11 Keene, then you know, that's what we meant by the extent possible.  
12 So, integrating that into the language,

13 **MS. DE LA TORRE:** Yeah. The only thing that I would like to  
14 integrate there is the idea that when you have two Board members  
15 that express an interest in putting something on the calendar in a  
16 system where two Board members can bring something to vote, which  
17 is how we function because we are five, I think that has to have  
18 like a heightened kind of level of priority.

19 **MS. URBAN:** Sure.

20 **MS. DE LA TORRE:** If there are two Board members that agree on  
21 the need of something coming to the Board, obviously it's legal, it  
22 shouldn't come. But if it is within, you know, the legal  
23 boundaries, it should be prioritized. Because we are five, two  
24 members can propose and bring something to a vote. So, do we have  
25 enough feedback for our general counsel to try to--

26 **MR. LAIRD:** I think I can try to recraft that. One point of  
27 clarification I'd like to make though, or at least understand, I'm  
28 presuming when it's a request from two members, we're assuming that

1 would be during one of these agenda items where we're talking about  
2 future agenda items. I bring that up because I think we could come  
3 across a Bagley-Keene challenge if we have two members who are  
4 privately requesting the same item, and then we have to coordinate  
5 with the chair on that item being added to the agenda, especially  
6 then if there's debate about whether it's appropriate at one  
7 meeting versus the next meeting. I'm concerned we could run afoul  
8 of Bagley-Keene if there's three members essentially participating  
9 privately in the discussion of what's going to be agendized in the  
10 future. So, I guess my presumption is that we would-- this would be  
11 during these discussions that we have.

12 **MR. LE:** That was my thought.

13 **MS. URBAN:** Yes. I mean, I think that is required under Bagley-  
14 Keene.

15 **MR. LAIRD:** Yes. Okay.

16 **MR. LE:** Like someone brings it up and it's like there's  
17 another Board member second.

18 **MS. URBAN:** Yeah.

19 **MS. DE LA TORRE:** Okay, so let me ask this question. If there  
20 was a request that comes up in between meetings, will it be  
21 appropriate to bring that to the general counsel, or I want to talk  
22 in this section about having a secretary of the Board, which is a  
23 role that I think will benefit for, but to somebody other than the  
24 chair and then let that person be the filter so that we don't run  
25 into Bagley-Keene issues. I just want to make sure. So, let's say  
26 for example, one Board member cannot attend the meeting for  
27 whatever reason. I don't see a need to kind of limit the ability of  
28 two Board members to--

1           **MS. URBAN:** No, it's usually fine for a Board member even to  
2 send me an agenda item. It's just if we run into the issue where  
3 you have two Board members and me as the third Board member.

4           **MS. DE LA TORRE:** But that would be the case whenever there's  
5 two Board members. So, that's what I'm saying, that maybe the  
6 process for two Board members should be to go to somebody other  
7 than the chair or bring them to the meeting.

8           **MS. URBAN:** Yes. And the challenge there is that, so two Board  
9 members could talk to a staff member who could then talk to me, but  
10 that's still a Bagley-Keene violation, because you can't get around  
11 Bagley-Keene by having somebody else in the chain. So, it may be  
12 that the way we need to operate here is limited a little bit by  
13 Bagley-Keene, and the two member concentrated interest kind of  
14 request happens in a public meeting when we have the discussion of  
15 future agenda items. But of course, agenda items generally can go  
16 to staff or to me as long as we don't involve too many Board  
17 members.

18           **MS. DE LA TORRE:** Right. But I think that there's still a  
19 benefit on enabling that conversation with the general counsel.  
20 Let's say two members are bringing something that turns out to be  
21 illegal for some reason, that conversation with the general counsel  
22 can help those two members craft the request in a way that makes it  
23 legal. So, I don't see--

24           **MS. URBAN:** Undoubtedly, it just may be that we would have to  
25 wait another Board meeting because two Board members could talk to  
26 general counsel. General Counsel could help them craft their  
27 request. As a third Board member, I couldn't then be involved in  
28 the conversation before the Board meeting. But in the Board

1 meeting, the next Board meeting, when we have our discussion of  
2 future agenda items, then those two Board members could mention  
3 their requested agenda item as sort of revised or glossed with help  
4 from the general counsel.

5 **MS. DE LA TORRE:** I think we might be saying the same thing.  
6 I'm just thinking about how those two Board members can get all of  
7 the information that they need to craft the request.

8 **MS. URBAN:** Yeah.

9 **MS. DE LA TORRE:** And what is the way to expedite that? And I  
10 think that enabling that conversation with either the secretary of  
11 the Board or the general counsel can be that path.

12 **MS. URBAN:** Thank you, Mr. Worthe?

13 **MR. WORTHE:** I just have a question. If it's in between  
14 meetings, you don't need two Board members. Just have one Board  
15 member make the request, have the general counsel advise that  
16 there's some problems with it and recraft it, so that you could be  
17 involved. If it is at the meeting and you have two, then we're  
18 fine. I mean, I just think that we're-- to try to craft a way that  
19 two people can speak outside of a meeting, we're just going to get  
20 ourselves into trouble. So, just have one person speak. You don't  
21 need a second person if you have an agenda idea.

22 **MS. DE LA TORRE:** I, you know, Bagley-Keene kind of bends your  
23 mind in a different direction as you start to be familiar with it.  
24 But I think if two Board members have had a conversation about  
25 agenda item, whether one of them or two of them are in the call  
26 with the general counsel is not going to make a difference for the  
27 Bagley-Keene, because they--

28 **MR. WORTHE:** It only does when it comes back to the chair

1 though.

2 **MR. LE:** Yes. At that point, you just can't bring it to the  
3 chair.

4 **MS. DE LA TORRE:** Right, right.

5 **MR. LE:** In that case, I think we're all in agreement. Right.  
6 So, in between meetings, you know--

7 **MS. DE LA TORRE:** You can get advice.

8 **MR. LE:** You can get advice, but if there's two of you, then  
9 you can't bring that request to the chair until the after that.

10 **MS. DE LA TORRE:** Yeah. That's what I mean. I think we're  
11 saying the same thing.

12 **MR. MACTAGGART:** Okay. I think we're on the same.

13 **MS. URBAN:** Alright. So, I think that we have this. I think  
14 that we have this sorted out. Mr. Laird, if I could request that  
15 you sort of flesh out the meeting agenda section a little bit to  
16 provide the sort of the sense of the Board that if two members are  
17 requesting an agenda item, but that both of the chair will calendar  
18 it. And although there is a need for some discretion, that that  
19 indicates an urgency, that it should be calendared as soon as  
20 possible, and to the extent that it would be, and I think it would  
21 be helpful to maybe set out the sort of path for requesting agenda  
22 items in a little bit more detail. And so, if two Board members  
23 have an agenda item, it's important not to loop in, assuming I'm  
24 not one of them. It's important not to loop in the chair, but they  
25 could talk with you, for example, and then bring it up in the next  
26 Board meeting if you could set that out a little bit. Wonderful.  
27 Okay. Thank you. Yes, Mr. Soltani?

28 **MR. SOLTANI:** [inaudible]

1           **MS. URBAN:** Oh, you know, I noticed and then I kind of-- yeah,  
2 I could hear you. So, you know, so everything's fine. All right.  
3 Ms. de la Torre?

4           **MS. DE LA TORRE:** So, on the recording of the meetings, I know  
5 that we have operated in this system where everything is recorded  
6 and is on Zoom, because we started during COVID. The three of us  
7 that are here, you know, remember that. But I just was wondering if  
8 we could-- let me go back here a second. There's the burden on our  
9 staff in making any of these meetings available through Zoom to the  
10 public. I think that burden is well justified when the topics of  
11 the agenda call for that kind of broad participation. But I can  
12 imagine in the future we might have, you know, agenda, items that  
13 are fairly boring for the general public. It might be something  
14 around our budget, et cetera. And my understanding is that so long  
15 as we meet our obligation to meet in a public space and have  
16 members of the public join us, there's no actual legal requirement  
17 to record the meetings. And so, I wanted to find some flexibility,  
18 and it might be that it's not a Board decision. I will be happy  
19 lead delegate this to our executive director and our staff. I just  
20 wanted, as a Board member, to indicate that I would be comfortable  
21 if the agenda didn't call for that kind of participation to choose  
22 a setting where we don't put that burden on the staff if it's not  
23 needed. Because I know that it will facilitate their ability to  
24 bring us together as a Board. So, just wanted to check with  
25 everybody else that that was something. I just don't want them to  
26 assume because we started this way, that we have to continue this  
27 way if there's a reason for not recording and being on Zoom for  
28 certain meetings.

1           **MS. URBAN:** Thank you, Ms. de la Torre. I confess Mr. Laird,  
2 I'm not a-- so, this first sentence, is this a legal requirement  
3 that it can be transcribed or audio recorded, or could we choose  
4 not to record?

5           **MR. LAIRD:** You could choose not to record. But I guess I want  
6 to, between a Zoom broadcast and a recording of the meeting, I see  
7 those as two separate topics. And you know, also specifically  
8 knowing that there's Bagley-Keene legislation further pending right  
9 now.

10          **MS. URBAN:** Yeah.

11          **MR. LAIRD:** There may be a requirement in the future that we do  
12 broadcast, sort of depending on the nature of where that bill  
13 lands. But, in terms of recording, that's where it's really to the  
14 Board's discretion on how it wants to record meetings. My personal  
15 observation has been the majority of boards do record their  
16 meetings at this point, just as an official sort of record of what  
17 happened. And that has largely replaced sort of the minutes  
18 structure.

19          **MS. URBAN:** And the minutes are very time-consuming.

20          **MR. LAIRD:** Yes. Yes.

21          **MS. URBAN:** They take a lot of staff time. Okay. Well, I think  
22 Ms. de la Torre's suggestion that we, and I don't think there's  
23 anything in this that would not sort of lead this to staff being  
24 able to advise what they would like to do with any particular  
25 meeting. Yes, Mr. Soltani?

26          **MR. SOLTANI:** Thank you, Ms. de la Torre for that suggestion. I  
27 definitely appreciate the flexibility and I could imagine meetings  
28 that are, say, purely closed session agenda items only, that

1 perhaps in those situations, the Zoom broadcast isn't necessary.  
2 But I will just observe that we have, I think, one person of the  
3 public here in the room today and 300 on Zoom. And a lot of our  
4 activities are about kind of ministerial or handbook or Board  
5 internal policies. So, I do think there is interest from the public  
6 about the budget or-- so what we may consider boring, I think the  
7 public does have an interest in. So, but I appreciate the  
8 flexibility. I'm open to it.

9       **MS. DE LA TORRE:** And that's the spirit of what I'm sharing,  
10 that I'm very comfortable with that decision being made by our  
11 staff. There's one thing that I might be old school about and  
12 that's minutes. I think minutes are helpful, minutes don't have to  
13 be long. But if we can have a record of the decisions that were  
14 made, like this specific language that we voted upon, that's kind  
15 of a book. It's how corporations function. It is like, you can go  
16 back and look at the decision that was made. When I was even  
17 reviewing this, I had to go back to recordings and transcripts that  
18 were like 50 pages long to figure out, you know, what exactly we  
19 voted on. So, I have a preference for having this short, brief  
20 minutes of every meeting. And to me, that is connected with another  
21 topic that I have brought to the Board in the past, which is the  
22 idea of appointing a secretary of the Board. And when I'm talking  
23 about appointing a secretary of the Board, I'm not talking  
24 necessarily about a new hire. It could be a responsibility that we  
25 decide somebody in our legal team can undertake. It could be a  
26 responsibility that we identify another agency that could support  
27 it. And we, you know, the AG has supported us in the past, so I  
28 will be very-- I will find it really helpful to have a person that

1 has the responsibility of being the secretary of the Board, keeping  
2 minutes for us. Same thing in closed sessions, maybe attending  
3 subcommittees so that the same person is in different meetings of  
4 different subcommittees and can identify situations where we might  
5 be running into overlap et cetera. So, let me pause here.

6 Secretaries of the Board to me are a very well-known role. So, I  
7 just wanted to get feedback from the rest of the Board in terms of  
8 the terms advantage of having somebody have that responsibility.

9 **MS. URBAN:** Thank you, Ms. de la Torre. I would happily commit  
10 to working with staff to talk with them about this role and how it  
11 might work. I don't know that it's really-- I don't want to put it  
12 in the handbook because I want to talk to staff about it. But it  
13 seems like a reasonable idea to me.

14 **MS. DE LA TORRE:** Should we take feedback from the rest of the  
15 Board?

16 **MS. URBAN:** Yes, of course. If there's any, Mr. Worthe--  
17 [crosstalk] Yeah. Okay.

18 **MR. LE:** Yeah, I think at least for, you know, scheduling, you  
19 know, the Board members we have, it's tough getting this on, you  
20 know, we have a calendar, but it's still tough to get everyone  
21 together. So, I could see that being a function of a secretary of  
22 the Board too. So, yeah, I'm not opposed to the idea. I just don't  
23 know budget-wise and, hiring wise, how do we do that? So, I would  
24 give the chair, you know, the power to talk to staff and, and  
25 figure out how do we approach this, which, you know, again, chair's  
26 got a thankless job, and, you know, we're making it a little bit  
27 harder here. So, thank you Chair Urban for you know, bearing with  
28 us.

1           **MS. URBAN:** Thanks, Mr. Le. Yes, Mr. Mactaggart?

2           **MR. MACTAGGART:** Sure. I have no problem with having a  
3 secretary.

4           **MS. URBAN:** Oh, I'm sorry. Yes, Mr. Mactaggart.

5           **MR. MACTAGGART:** Thanks. I have no problem with having a  
6 secretary. I could see a utility in having, you know, a summary of  
7 the minutes, just because it is either you have to go through the  
8 whole, you know, YouTube thing or you have to go through the 150  
9 pages of the transcript so I could see that would be useful to have  
10 that as well.

11           **MS. URBAN:** Thank you. I will talk with staff about that. We  
12 have had minutes in the past that were extremely time-consuming to  
13 produce. They were time consuming to discuss and approve. I  
14 understand Ms. de la Torre is talking about something that is more  
15 like a corporate minutes, which if we had a transcript together  
16 with that, I would feel comfortable we had a record of the meeting.  
17 But with the Board's indulgence, I would like to talk to staff  
18 about what we are actually asking of them. And I think the language  
19 in the handbook allows for us to move forward, with our preference  
20 with the supportive staff. Yes, Mr. Soltani?

21           **MR. LAIRD:** I was just going to offer that staff would be in a  
22 position to highlight motions and votes and transcripts going  
23 forward if that would be a helpful meeting by highlight,  
24 intermediate path. You know, my point is so that when you review  
25 the transcripts on the website, you'd be able to immediately find  
26 the motion and votes.

27           **MS. DE LA TORRE:** What would be really useful is to have it all  
28 in a book because then we have to go through, I don't know how many

1 meetings we have had. I don't recall for some decisions that we  
2 made when we made it. And so, sometimes when I am trying to  
3 remember, I have to kind of check the agenda to figure out if that  
4 was discussed in this, that meeting, and then go into the minutes.  
5 So, we might not want to call the minutes. I don't mind if it's a  
6 different name, but if we had one reference of exactly what was put  
7 to both and exactly what was approved, that will be helpful.

8 **MS. URBAN:** Alright. So, I appreciate all of the discussion on  
9 this. In the interest of efficiency, I think we understand the  
10 request. And again, I would ask the Board's indulgence for me to  
11 talk with staff in a little more detail about how we might  
12 accomplish this.

13 **MS. DE LA TORRE:** On the subcommittees of the Board, it says  
14 this, the Bagley-Keene Open Meeting Act permits subcommittees of no  
15 more than two Board members. That's confusing to me because I think  
16 Bagley-Keene permits a wide variety of subcommittees. It's just  
17 that if more than two, then they're subject to the same rules of  
18 this--

19 **MS. URBAN:** There are three clauses in the sentence. It's the  
20 last clause: to meet and develop advice outside of notice public  
21 meetings otherwise required by the act. Then you can have two,

22 **MS. DE LA TORRE:** Right. But if we're talking about  
23 subcommittees of the Board, if that's the subsection, shouldn't we  
24 have a better understanding of the broad ability of appointing  
25 subcommittees? If you could that reference guide.

26 **MS. URBAN:** Okay. So, I think that Mr. Laird, if it's alright,  
27 I think that we could add a little more information about  
28 subcommittees. If they choose to meet in a way that complies with

1 Bagley-Keene, then they have more flexibility, right?

2 **MR. LAIRD:** That's correct. Although, if the question is about  
3 membership, I'll just point out that a subcommittee of three  
4 members would actually be a majority of the Board. It would be a  
5 Board meeting--

6 **MS. URBAN:** --would be a, yes.

7 **MR. LE:** Maybe just add that sentence.

8 **MR. LAIRD:** Okay.

9 **MS. URBAN:** Thank you.

10 **MS. DE LA TORRE:** So, we couldn't appoint a subcommittee that  
11 have three members.

12 **MS. URBAN:** It wouldn't be a subcommittee; it would be a quorum  
13 of the Board.

14 **MR. LE:** It needs to be a Board meeting.

15 **MS. DE LA TORRE:** I thought we might want to check on that.

16 **MS. URBAN:** Some Boards have more than five members so you  
17 could--

18 **MS. DE LA TORRE:** Right. But we could have a subcommittee of  
19 three, where two is the majority in that subcommittee. Right? If we  
20 wanted to delegate on a subcommittee of three, it will make sense  
21 to me that that subcommittee could meet, and then they could decide  
22 with a vote of two.

23 **MS. URBAN:** It would be a quorum of the Board, so I suggest  
24 that we ask Mr. Laird to verify.

25 **MS. DE LA TORRE:** Yeah, look it up because it doesn't make  
26 sense.

27 **MS. URBAN:** Okay. Thank you.

28 **MS. DE LA TORRE:** Okay. So, in this one at the end where we

1 have-- in order to ensure the Board is able to exercise consistent  
2 and equitable oversight of the CCPA's function, we have a real  
3 statement of the agreement that we had. One, two, and three. I  
4 actually went back to our meeting agenda and our meeting  
5 transcripts. And it seems to me that they don't-- this is not  
6 exactly what the transcript says. So, in three, in two, the  
7 subcommittee can be given a specific deliverable, subject based  
8 assignments. I think that's-- I know that that's exactly what the  
9 Board--

10 **MS. URBAN:** As opposed to deliverable based?

11 **MS. DE LA TORRE:** Deliverable subject based assignments, that's  
12 what the transcript says. And in three, this is actually the Board  
13 can benefit from the heightened engagement. That's what we voted  
14 on. I encourage the general counsel to go back to the transcript  
15 and make sure that I'm correct, but I'm fairly sure I'm correct. I  
16 was surprised to see something in this handbook that didn't match  
17 the actual vote. But to me, it's just a reflection of what I  
18 mentioned before, which is if we had one book with all of our  
19 agreements and what was voted upon, it will be not only easier for  
20 the Board members to understand the history of what decisions we  
21 have made, but probably also for our general counsel to create  
22 these kind of resources for us.

23 **MS. URBAN:** Thank you, Ms. de la Torre, that's probably my  
24 fault. My guess is the conversation drifted slightly from the memo.  
25 This is from the memo, and that when I stated the motion, I  
26 substituted a couple of words so my apologies. But, of course, it  
27 makes sense for this to reflect the wording that we voted on.

28 **MS. DE LA TORRE:** Okay. And we're on six now?

1           **MS. URBAN:** We are, yes.

2           **MS. DE LA TORRE:** Board member responsibilities.

3           **MS. URBAN:** Oh, actually Ms. de la Torre, if it would be  
4 helpful, well, I'm probably not the best person to introduce this.  
5 It might be Mr. Laird, but maybe he can confirm what I'm saying.  
6 So, my understanding of the responsibilities of Board members and  
7 chairperson is that these were sort of standard items drawn from a  
8 lot of different Board handbooks and so forth, and they're sort of  
9 run through some of the laws and requirements. So, obviously, we  
10 have to comply with the provisions of Bagley-Keene, but some of  
11 them are in staff's judgment, best practices, and very widespread  
12 practices. So, I think I needed to kind of understand some of that  
13 background, and I'd first asked Mr. Laird if I stated it correctly.  
14 Yeah, and--

15           **MR. LAIRD:** That's correct. And this language largely appeared  
16 in the 2021 version of the handbook.

17           **MS. URBAN:** Right. Right. Yes. Okay. Thank you. All right, so  
18 with that, Ms. de la Torre, my apologies, for pausing. I just, I  
19 know this is a little bit different from what we've been talking  
20 about so far.

21           **MS. DE LA TORRE:** Okay. So, in bullet point 3, Board members  
22 will not discuss personal or Board business matters outside their  
23 official capacity or outside of appropriately notice and agendized  
24 meeting on the subcommittee-- or subcommittee meeting. I had a  
25 question of what does "Board business" mean. And also, are we  
26 seeing that we can talk at all even about our personal opinions if  
27 we are not on a Board meeting?

28           **MS. URBAN:** No, personnel as in employees.

1           **MS. DE LA TORRE:** "Board meetings will not discuss personal or  
2 Board business."

3           **MS. URBAN:** Personnel. Personnel. Hiring, HR staff as opposed  
4 to personal. Like--

5           **MS. DE LA TORRE:** Oh, personnel. My pronunciation. I apologize.  
6 Yeah. Personnel. Thank you for the correction. So, what does a  
7 Board business mean and why can't we not talk about, I mean, let's,  
8 let's define what does Board business mean here?

9           **MS. URBAN:** I think it's anything that's going to-- that has  
10 been before the Board recently, is likely to be before the Board.  
11 We have to use our judgment because we're trying to avoid or we are  
12 not trying to, we are avoiding violating Bagley-Keene. Yes, go  
13 ahead.

14           **MR. LE:** I think I also asked Mr. Laird this email, in an  
15 email, and I think there was an edit that we were, we talked about  
16 making on--

17           **MR. LAIRD:** Yeah, I think we've suggested that it would be an  
18 edit to say-- thank you for bringing this to my attention by the  
19 way. I think it was between a majority of Board members.

20           **MR. LE:** Yeah. Yeah. It was a missing.

21           **MS. URBAN:** Oh, I see. A missing component of the Bagley-Keene  
22 thing. Yes. Right.

23           **MS. DE LA TORRE:** So, let me repeat back to make sure that I  
24 understand. What we are saying here is we saw comply with Bagley-  
25 Keene, but we can express our personal opinions in other--

26           **MR. LE:** No, this doesn't stop you from expressing your  
27 personal opinion, right? As far as I know, no.

28           **MR. MACTAGGART:** So, this would just be-- this would just be

1 limited to saying that a majority of, I am not going to talk to  
2 three of you about, or two more of you about a Board business  
3 matter.

4 **MS. DE LA TORRE:** Okay. That makes sense.

5 **MR. MACTAGGART:** Yeah.

6 **MR. LE:** Yes, that's correct.

7 **MS. URBAN:** Yeah, we were chit-chatting about kids among three  
8 of us in the break, and I'm going to say that in public. Well, no,  
9 pretty sure that was okay.

10 **MS. DE LA TORRE:** But even a Board matter, anything that has  
11 been part of this discussion is something that I can go back and  
12 have a conversation with my appointing authority about if I find  
13 that useful or have a conversation with an expert if I find useful.  
14 That's it. Read prior version without they read to me as limiting  
15 Board members from doing something--

16 **MS. URBAN:** Like talking with other people besides other Board  
17 members. I see. Okay. And that's related to Mr. Laird's catch that  
18 he--

19 **MS. DE LA TORRE:** Exactly.

20 **MR. LE:** Yeah, we just, once we add the majority.

21 **MS. DE LA TORRE:** Right, right, right. Yeah. With that caveat,  
22 it makes sense. And on-- five Board members have maintained the  
23 confidentiality of non-public and otherwise confidential documents  
24 and information related to Board business. I just wanted to get an  
25 understanding of what does confidential and non-public mean in this  
26 context? We don't necessarily mark our documents as confidential  
27 and non-public internally. And so, I don't-- so, let me give you an  
28 example. For our subcommittee on new rules, we have a lot of

1 internal conversations within the subcommittee, but now in this  
2 meeting, we're bringing actually a draft to the Board. So, to me,  
3 that draft, once it's public, I can talk about public version of  
4 the draft outside of the subcommittee. And I don't believe I'm  
5 making any, you know, I guess I'm not violating any confidentiality  
6 rule because the documents have been published. So, I was a little-  
7 - I wanted a little bit more granular drafting around what does  
8 confidentiality and non-public mean?

9 **MS. URBAN:** Well, I can give a couple of examples to see if  
10 they, what I would imagine, see if they would make sense. One is  
11 within the work of the subcommittee, the subcommittee was probably  
12 receiving some legal advice, that would be confidential. You would  
13 have a duty to maintain it confidentially. Of course, if some of  
14 that information then resulted in a public document, that would be  
15 a public document and a longer confidential. Closed session  
16 discussions are, strictly confidential. So, we leave a closed  
17 session, and we have a duty to maintain the confidentiality of  
18 closed session. I don't think there's a way to list all the  
19 different possibilities that could come up, but it's not dissimilar  
20 to what we work with every day in our day jobs as lawyers.

21 **MR. LAIRD:** I should note that this also is in reference in  
22 part, I think at least to our underlying statutes requirements of  
23 Board members, specifically in--

24 **MS. URBAN:** Oh, that's right.

25 **MR. LAIRD:** --198.199.15. One of the requirements is that all  
26 Board members maintain the confidentiality of information, which  
27 has come to their knowledge in the course of the performance of  
28 their tasks or exercise of their powers, except to the extent

1 disclosure is required under the Public Records Act.

2 **MS. DE LA TORRE:** So, maybe that's the right drafting for here.  
3 Wouldn't that be a better drafting?

4 **MR. LAIRD:** I thought adding documents was actually more  
5 specific than just saying information.

6 **MS. DE LA TORRE:** I found that really clear, and this one a  
7 little confusing.

8 **MR. LAIRD:** It's to the Board's discretion.

9 **MS. URBAN:** Yes. I have no opinion. Any other opinions? No.  
10 Okay.

11 **MS. DE LA TORRE:** Okay. So, in responsibilities of the  
12 chairperson, bullet point four, we've never made a determination on  
13 appointing our chair as the person who will represent Board before  
14 external entities. I have always conceived the Board as a board of  
15 equals. And this is, you know, something that we can have a  
16 conversation about. I don't find any challenge with, for a specific  
17 topic, if there's a need for it, appointing the chair or the member  
18 of the Board to represent us. I think we just recently did that in  
19 the last meeting around legislative development. But the idea of  
20 changing our practices to where we decide to fully appoint the  
21 chair to represent the Board before external entities, I thought  
22 it's something that deserves a little bit more conversation.

23 **MS. URBAN:** Thanks. You know, I suggest that we talk about this  
24 as part of talking about communications generally. My understanding  
25 is that, again, this is very standard and the reason why it is  
26 standard is because it's very easy for the public or policymakers  
27 or others to become confused about what is an agency position, and  
28 what is an individual person's position. And it's also common for

1 challenges to arise when staff are not aware of, you know, public  
2 statements, of course, not speaking directly to your pointing  
3 authority, et cetera. And so, my understanding is that Mr. Laird,  
4 has really looked carefully at policies and practices and sort of  
5 put together a vision of this for us to discuss. I think this is a  
6 component of the sort of lengthy description of guidance for  
7 communications. And so, I would suggest we kind of talk about that  
8 as a topic together, and then of course, I welcome discussing,  
9 directly the role of the chair, which I don't see as not meeting  
10 the Board as not a set of equals more or less, but it's pretty  
11 basically practical, particularly between meetings, frequently or  
12 not frequently, infrequently. But sometimes, there's a need for  
13 somebody to say something and we need to have a plan for that. So,  
14 Mr. Laird, would you mind, and I hope I'm not putting you on the  
15 spot here, but so we have some discussion of conflicts of interest  
16 and the incompatibilities, activities that we adopted, and our  
17 training on bias and prejudice. All of this is sort of connected to  
18 communications because it is so key for the Board not to appear or  
19 to inadvertently become biased or to engage in incompatible  
20 activities. And then of course that connects to, but sometimes it's  
21 a bit intention, with communications. Each of us as an individual,  
22 each of us has some expertise in the area. And so, of course it  
23 makes sense that we would be, speaking as ourselves sometimes but  
24 we do need to be thoughtful. And any time we might be perceived as  
25 speaking for the Board, and I will say this just very firmly and  
26 clearly, and you may disagree with me, but I think that we need to  
27 be respectful of our staff's work to carry out the messaging of the  
28 agency and to make sure that the agency's positions are clear. And

1 thus, I very much support the guidance to give staff a heads up if,  
2 for example, a reporter calls us or we are doing something out in  
3 the public, just to give them a heads up. Of course, they're not  
4 going to, you know, tell us we can't speak on our area of  
5 expertise. But I think they're both sort of practical  
6 considerations there and considerations for making the job a little  
7 more tractable for staff. But with that, I apologize Mr. Laird, I  
8 asked you to say something and then I kept talking, because I do  
9 think this is complex and I think that particularly for this agency  
10 and this Board, where we all have a deep interest in the area, many  
11 of us work in this area every day, that making sure that we have a  
12 solid understanding of how we are going to work together and work  
13 with staff in order to be sure that our roles are clear and that  
14 the agency's mission and our work on behalf of Californians is  
15 clear, is an important discussion to have.

16 **MR. LAIRD:** Well, I agree with what you just said in terms of  
17 what's presented in the handbook and, to the chair's point, this  
18 section sort of all is coordinated together, you know, referring to  
19 the communications section, I think we did try to very specifically  
20 delineate the difference between communications that are on behalf  
21 of the Board officially representing Board positions, versus when  
22 Board members are out in the public acting in their individual  
23 capacities and sort of what the parameters of those engagements  
24 are. And again, I think to the chair's point, I don't think we're  
25 looking to restrict anybody's sort of participation in a public  
26 venue to talk about even items that are under the jurisdiction of  
27 this Board. But it is set up to kind of facilitate a sort of a  
28 uniform approach to these issues so that, again, to the chair's

1 point, staff can sort of coordinate with and adequately represent  
2 that these positions with the Board and then also of the Board. And  
3 then also so that there's sort of a uniform understanding of how  
4 the Board conducts its business. So, you know, I don't know if  
5 that's exactly what you're looking for, but happy to kind of help  
6 walk through any parts that maybe seem disconnected to any members  
7 of the Board and try to tie it together.

8 **MS. URBAN:** Thank you, Mr. Laird. And I would say the way I've  
9 been thinking about this is that there are sort of three  
10 categories. There are categories of communication in which what is  
11 being communicated is a position of the Board, which is a position  
12 of the agency. There are categories of communication, which is not  
13 a position of the Board or a position of the Agency, so for  
14 example, wearing another hat, I give a talk on copyright law. And  
15 then there is a category that is a little bit more complicated  
16 where we may be speaking on our own behalf, but it could be  
17 confusing, because the subject matter overlaps because of the venue  
18 we are in, et cetera. And we agreed, in our very first meeting on  
19 June 14, 2021, that we would always make clear that we were  
20 speaking only for ourselves. At the same time, sometimes it is  
21 still likely to be confusing. And so, the sort of approach here  
22 tries to take into account the reality of that situation while of  
23 course not saying you're on this Board, you know, you don't get to  
24 have opinions, et cetera. All right, with that, any thoughts? Mr.  
25 Le and then Mr. Mactaggart?

26 **MR. LE:** Yeah, you know, I think it's good practice. You know,  
27 me personally, I always like to say, you know, this is my personal  
28 opinion, I don't want to be representing the Board, because I know

1 that takes the full Board and the agency because I know that takes  
2 communication with staff, the chair.

3 **MS. URBAN:** And vote. We have to vote on a lot of things.

4 **MR. LE:** Yes. Yeah. Yeah. So, I think it's much easier to speak  
5 when you're not speaking on the full Board. So, you know, I think  
6 as it goes to, you know, the responsibility of the chairperson, I  
7 want to dump that on the chair, you know, is to have to do all of  
8 that navigating and only when notice properly to the staff that I  
9 would be speaking on the Board, would I have to engage in this back  
10 and forth about what I can and cannot say on behalf of the Agency.  
11 So, I mean, I have no problem with kind of putting the default as  
12 the chair. And we have an out here where another member can speak  
13 as you know, for the Board. But yeah, that should be communicated.  
14 So, I generally don't have an issue with this approach. And, you  
15 know, and that, that covers the travel. You know, if we're  
16 traveling, then we should speak on behalf of the Board if we're  
17 using state funding. So, I generally think this is fine.

18 **MS. URBAN:** Thank you. Mr. Mactaggart?

19 **MR. MACTAGGART:** Yeah. Madam Chair, I just wanted to know how  
20 we're going to approach this because I have also quite a few items  
21 on this handbook. And so, I've been sort of just holding off. I  
22 have a bunch of comments on this particular matter. So maybe, I  
23 don't know if you want to run through Ms. de la Torre's first and--  
24 because I don't quite know how to do this. I've got it.

25 **MS. URBAN:** Okay, thanks Mr. Mactaggart for the process notes.  
26 So, and my apologies. So, have you do-- are your comments from this  
27 point forward or were there items that we were already talking  
28 about? I would've thought--

1       **MR. MACTAGGART:** Mostly, they were mostly around six and seven.

2       **MS. URBAN:** Around six and seven.

3       **MR. MACTAGGART:** Mostly, yeah.

4       **MS. URBAN:** Okay. Well, then, as we go, if you could offer your  
5 thoughts, that would be really helpful.

6       **MR. MACTAGGART:** Okay. Well, on this on this particular  
7 section, I do think it's worth a conversation. I mean, I guess my  
8 comment was, I thought there was a lot of redrafting to be done  
9 personally in this handbook. So, I don't know exactly, but it did  
10 feel like this was a pretty big delegation, and it wasn't, didn't  
11 seem to be that-- again, I'm always trying to look at it from an  
12 institutional point of view as opposed to you, I know you would be  
13 fair and you're not going to-- but I think we should plan for a  
14 situation where it's a different chair. And so, for example, I  
15 think there should be some process around deciding even travel,  
16 like who goes to represent at a conference you know, who goes to  
17 talk. And most of the time, it's going to be very informal, which I  
18 think is fine, but I just think there should be some kind of a  
19 process around it, which I-- and I don't think we necessarily have  
20 the time or need to develop that process right here today, kind of  
21 wordsmithing it. But you know, for example, the next bullet point  
22 about the subcommittees and that the Board gets to form and Board  
23 chair gets to name them and assign the composition and create them  
24 and dissolve them. I thought that was also a lot of power to  
25 devolve to the chair. And I think that right now, that's a Board  
26 decision. So, I think, you know, that should probably be kept as a  
27 Board. And again, I don't think if in practical matters, I think if  
28 you show up and say, I would like to have this committee, no one's

1 going to say no on this Board, but in the future, I think it'd be--  
2 it's just worth having it be a Board vote as opposed to just  
3 automatically handing it over to the chair. So, that's just this  
4 section, those are my comments there.

5 **MS. URBAN:** Thank you. Can we hold the question on the  
6 subcommittees and continue with the communication policy and return  
7 to that. Mr. Worthe?

8 **MR. WORTHE:** Yeah. I mean, I think there's only five of us  
9 here, right? And unfortunately, being chair does add some  
10 responsibility, you know, and we appreciate that you take that on.  
11 But doesn't it make it easier for all of you if you're-- if you  
12 know, only the chair can speak on behalf of the Agency? Doesn't  
13 that let those of you that are actually out speaking a lot more  
14 than someone like me in these fields, it makes it easy to say, no,  
15 only the chair speaks on behalf. I mean, that to me feels like it's  
16 a great protection for you. And I think, you know, just the larger  
17 concept of what if we have a really bad chair. Well, this Board's  
18 going to fix that, right? I mean, I don't think we can write  
19 everything for the worst case. If something happens and the Board  
20 feels like a chair is not listening for agenda items, not, you  
21 know, letting them go to speak at, you know, proving travel, the  
22 Board will solve it.

23 **MS. DE LA TORRE:** I don't believe that's the case because we do  
24 not vote on the chair.

25 **MS. URBAN:** Microphone.

26 **MS. DE LA TORRE:** We do not appoint the chair. The Board  
27 doesn't appoint the chair. It's the governor that appoints the  
28 chair.

1           **MR. WORTHE:** Right. So, if we have a Board that's that  
2 dysfunctional, I just-- my mind says it's going to get to the  
3 table, it's going to get solved some way. It's not going to-- we're  
4 not going to be sitting here accomplishing nothing over seven hours  
5 every other month. That's just my feeling. You're technically  
6 absolutely right. But there's some people up here that are pretty  
7 smart or smarter than me. We'll figure it out, in my mind. But back  
8 to communication, which is where I think we were landing. I think  
9 you really want this language. I think you need this so that, you  
10 know, and others know that when you're speaking, you're not  
11 speaking on behalf of the Board. I just think that's, you know, at  
12 some point, the chair does have certain responsibilities that are  
13 above and beyond the other four members, I believe. That's all.

14           **MS. URBAN:** Thank you, Mr.-- Mr. Worthe. Mr. Mactaggart?

15           **MR. MACTAGGART:** Well, if we're going to talk about the  
16 communication section also in article six now, I do have some  
17 concerns, big concerns about the notion that the Board members are  
18 going to adhere to a Board decision. So, this section-- because  
19 what Mr. Worthe said, I agree when it's an official Board position,  
20 of course someone calls me, I'm going to say, look, go talk to the  
21 Board chair, go talk to the executive director. But at the same  
22 time, I think it's incredibly important that the Board don't lose  
23 independence. And so, this whole notion that the Board shall not  
24 privately or publicly lobby for or endorse or otherwise engage in  
25 personal efforts that would tend to promote their own personal,  
26 political views or goals.

27           **MS. URBAN:** Sorry, Mr. Mactaggart.

28           **MR. MACTAGGART:** Yeah.

1           **MS. URBAN:** Would you mind giving a page number?

2           **MR. MACTAGGART:** That's page 18.

3           **MS. URBAN:** Thank you.

4           **MR. MACTAGGART:** Right above media inquiries.

5           **MS. URBAN:** So, the paragraph right before?

6           **MR. MACTAGGART:** Right before, yeah.

7           **MS. URBAN:** Thank you.

8           **MR. MACTAGGART:** I find that very troubling because what we're  
9 trying to do is get a multiple state of opinions. That's why there  
10 are multiple appointing authorities. So, it wasn't just-- that's  
11 why the Board was created in the first place. So, it wasn't just an  
12 agency where the governor appointed the executive director and that  
13 was it. And so, of course, you can imagine that we're not always  
14 going to be 5-0, and the Board chair has done a great job in the  
15 past of getting us there. But again, in the future, there's going  
16 to be instances where people disagree and perhaps vociferously  
17 disagree with the position the Board's taken. And what this says is  
18 basically, it's kind of a gag order. As soon as three people in the  
19 Board vote, the dissenting people can no longer really talk about  
20 it. And yet that's-- I can't even imagine how that would work in  
21 real life, because let's say you speak out in a Board meeting and  
22 you really disagree with the position the Board's taken, you got to  
23 be able to say in the future why you disagree with it. And I think  
24 the appointing authorities, if they actually focused on this, would  
25 be kind of horrified to think that their appointees were being  
26 essentially in the future muted by an action of the Board. And I  
27 can, you know, you can create all sorts of scenarios where an  
28 appointing authority really wouldn't want this. And so, even below

1 that, immediate in inquiry is expressing a personal opinion, even  
2 when, you know, it says, basically, don't express in a personal  
3 opinion, even when you've stated that it's not a position of the  
4 Board. Again, as long as we're-- I think we're all adults here, and  
5 as long as we can say, "Hey, look, this is my point of view, it's  
6 not the Board's official position," I can't even imagine that I  
7 should not talk to the media, or someone shouldn't talk to the  
8 media if they're being clear about that. And I think we have to  
9 trust each other that we're going to be clear. But this basically  
10 the most of the communications section, I sort of had trouble with  
11 because it felt very much like it was trying to control the  
12 independence of the Board, which I think is one of the strengths of  
13 this Board is that we have presumably different points of view on  
14 many of these things. And I don't think it's intentional. I just  
15 think it's an unintentional consequence if we adopt this. And so,  
16 I'm not at all comfortable with this. Most of this communication  
17 section.

18 **MS. URBAN:** Thank you, Mr. Mactaggart. So, the sentence about  
19 expressing a personal opinion, I think is just a descriptor of what  
20 can happen, not a "don't express a personal opinion." I certainly  
21 hear what you're saying with regards to the private or public  
22 lobbying. Would you be comfortable if that were revised to, and  
23 remember, to your point about institutions versus people, this is  
24 for people who are going to come onto the Board, pick up a book and  
25 might be learning the Board member position for the first time, and  
26 that this clearly say that this is a situation when it's  
27 particularly important that the Board member be clear that this is  
28 their position.

1           **MR. LE:** --their personal opinion--

2           **MS. URBAN:** --their personal opinion and not the Board's.

3           **MR. MACTAGGART:** Sure. I mean, I think that there's-- I don't  
4 want to wordsmith, I don't know that this document needs to be--

5           **MR. LE:** What if we added--

6           **MS. URBAN:** One second. Okay, Mr. Le?

7           **MR. LE:** What if we just added to the very end, you know,  
8 without identifying that this is your own personal opinion. So, you  
9 can't do it unless you say that "Hey, this is my personal opinion,  
10 it's not the official Board position," which I think is what the  
11 intent, as I understood it was supposed to be.

12           **MS. URBAN:** Let me just back up and say, as I understand this  
13 functionally, what this section does is to remind or teach Board  
14 members that for official opinions of the Agency, those can only be  
15 taken by the entire Board, number one. And it's important not to  
16 represent something inadvertently or purposely as a position of the  
17 Board when it is not. To make clear that that doesn't mean of  
18 course, the Board members cannot, or even should not, in my  
19 opinion, talk from their expertise or talk about their own  
20 opinions, but they need to be clear that it's not a position of the  
21 Board. And then and this, I, you know, this may be something that  
22 feels chafing to some people, but I do think that I support an  
23 agreement among the Board that if we're going to talk to media, if  
24 we're going to be out in the world talking, that we among ourselves  
25 agree that we would give staff a heads up just so they know what's  
26 going on for the interests of the Agency. So, you know, there  
27 aren't that many rules here other than don't present a position of  
28 the Board that is not a position of the Board. There's a lot of

1 guidance.

2       **MS. DE LA TORRE:** Okay, so I, in general, when I was presented  
3 with this document, my feeling was not that we need more words, is  
4 that we need less words. Because one of the reasons why this is  
5 complicated is because we're talking about this section in  
6 connection with the other section. I think that we already have a  
7 section that says, we shall only speak on our own behalf. I think  
8 we can all exercise our common sense. Our appointing authorities  
9 will also take action if, like our new Board member mentioned, you  
10 know, somebody's not being a constructive member of the Board. So,  
11 to me, this 24 pages, if we actually take information out and we'd  
12 make it 10 like bylaws that are just clear principles, it's just  
13 going to be easier to have a conversation about them and agree on  
14 them rather than adding more language. I had--

15       **MS. URBAN:** Sorry, Ms. de la Torre, I wanted to go back to Mr.  
16 Mactaggart because we were responding to his comment. And I don't  
17 know that we heard Mr. Mactaggart, if this were revised to be a  
18 reminder that it's your position, if that would be--

19       **MR. MACTAGGART:** Yeah, I would-- conceptually, I completely  
20 agree that it's important for Board members when they're speaking  
21 not on behalf of the Board, their own personal opinion to identify  
22 that they've done so. That makes all the sense in the world. I just  
23 thought that this is cumbersome. There are a lot of kind of things  
24 that are seeming across purposes, because even this media inquiries  
25 where expressing a personal opinion language is, it does follow on  
26 the previous sentence, so it implies that, at least to me, that you  
27 shouldn't express a personal opinion. On the previous page, you  
28 know, there's something saying the member shall not speak on behalf

1 of the Board, which of course they shouldn't without prioritization  
2 from the chairperson, the ED or the Board as a whole. But then I'm  
3 like, well, how can the chair or the ED allow a member to speak on  
4 behalf of the Board if it is not a Board position? Because on the  
5 previous page it says the chair can't speak on behalf of the Board  
6 unless it's a Board position. So, I just felt like this just was  
7 not very clear. And there are now enough edits that we've been  
8 talking about that I don't know that it wouldn't make sense to kind  
9 of get another review of this. I think I dislike doing these things  
10 on the fly where we're sort of asking the general counsel to come  
11 up with some language and then saying, we'll look at it in the  
12 future. And I'd prefer to get a revised version of this for us to  
13 take a look at it in a future meeting, because I do think this  
14 communication policy troubled me as a-- and even for example, what  
15 if a Board member goes to a conference, but they're not officially  
16 being, you know, they're representing the Board. They're there. And  
17 so then--

18 **MS. URBAN:** And then they say, I'm not-- these are my-- I do it  
19 every single presentation. I have it on a slide, and I say it  
20 verbally, and I put it in the footnote of every paper. I'm not  
21 speaking on behalf of the California Privacy Protection Agency or  
22 its Board. These are my personal opinions. I'm not speaking on  
23 behalf of the University of California. It's quite straightforward.

24 **MR. MACTAGGART:** I understand that. But what the language says  
25 its Board representative. Board members representing the Board or  
26 agency in meetings, conferences, or other similar events. And the  
27 reality is, when you go to those events, you've got a big thing on  
28 your chest saying CCPA.

1           **MS. URBAN:** Well, if you are there as the CCPA, then I think  
2 that is where we get into that sort of area that I think is the  
3 most challenging, where it is actually hard to disclaim it and have  
4 anybody believe it. And, you know, we could just pretend that  
5 doesn't exist. But I don't think that's in the interest of the  
6 Agency.

7           **MR. MACTAGGART:** Right. But for me, it's important to be able  
8 to go and obviously the world thinks that you represent, that you  
9 were part of the Agency, and then you can say in your talks, by the  
10 way, this is not an official part of what I'm saying.

11           **MS. URBAN:** --of the Board. Right?

12           **MR. MACTAGGART:** But I don't think that language is clear here.  
13 That potential is not fleshed out here.

14           **MS. URBAN:** I have the-- sorry Ms. de la Torre, just one  
15 second. So that is certainly the intent. And to the extent, it's  
16 unclear, Mr. Laird, I guess you would-- I'm sure you would be  
17 willing to look at it again. But that is not at odds with the  
18 substance. Mr. Soltani and then Ms. de la Torre's waiting.

19           **MR. SOLTANI:** Thank you. And let me just give a concrete  
20 example. So, last year, you, Ms. Mactaggart, and you, Ms. de la  
21 Torre spoke at the annual privacy, kind of the IAPP privacy event  
22 in Washington DC and you were identified as Board member  
23 Mactaggart, and-- or actually at that time, you were not a Board  
24 member, but Ms. de la Torre was a Board member, and the  
25 conversation was about the Agency's enforcement priorities and our  
26 approach to privacy. And we, as you know, we had a limited comms  
27 team at that time, but we were only made aware of that when we  
28 received both press inquiries as well as coordinating with the

1 organizers of the event, when we were trying to schedule a panel of  
2 actually speaking on behalf of the agency where they're like, did  
3 you know your Board members are speaking? Those are the kind of  
4 situations we're trying to avoid to maintain that, you know. And I  
5 think I defer to the Board how you want to approach that, but those  
6 are the type of situations that come into light. And the press and  
7 the public really portray these as they don't differentiate as  
8 whether it's a Board member or the Agency's position, and then it  
9 becomes, it's really difficult to handle. And so, I want to  
10 understand how the Board want to approach that. If you want to kind  
11 of approach that as a kind of a very disjoint position where every  
12 Board member is out lobbying for their own individual positions,  
13 that's a different kind of comms approach and agency approach than  
14 when you all have these, as you said, very kind of vociferous  
15 debates in these meetings, which I take--

16 **MS. URBAN:** I don't know that we're usually vociferous. Yeah,  
17 we do debate.

18 **MS. DE LA TORRE:** So, I want to respond to that because I was a  
19 Board member when that meeting happened. And it speaks a little bit  
20 to how we need to coordinate better. I didn't know that the Agency  
21 was going to be there either. It was never brought to my attention  
22 that the Agency was going to be there either. I just saw you in the  
23 meeting. And I am pretty comfortable to say that I clearly  
24 disclaimed that I was speaking only as a Board member, and I don't  
25 believe that the conversation was around enforcement. I think the  
26 topic was much broader. And when enforcement was brought up, I made  
27 it clear that you know. So, I'm just speaking to, I think that we  
28 all have common sense. I don't know that we control with, you know,

1 it's published around whatever we say, but a need to better  
2 coordinate to understand where the Agency is attending meetings,  
3 where we individually are attending meetings, and what is the  
4 connection between that? What are the opportunities with Board  
5 members should be part of the representation of the Agency? And to  
6 me, the Global Privacy Assembly, which is happening October 15th,  
7 is if we don't go, if we don't send any Board member to that  
8 meeting, it's the third year on a row that our agency doesn't send  
9 Board members to represent the agency to a meeting that has been  
10 happening for 45 years, where all agencies send their  
11 representatives and many agencies, not all agencies that have  
12 boards send, you know, members of the board. So, it just speaks to  
13 our need to mature as an organization and coordinate better. I also  
14 want to say that if that lack of coordination in any way created  
15 difficulties for our staff, I apologize. And I'm committed to do  
16 better, organize ourselves better so that we don't put the staff in  
17 a situation where they don't know how to respond.

18 **MS. URBAN:** Thank you, Ms. de la Torre. Mr. Le?

19 **MR. LE:** Yeah. This is just a suggestion, so feel free to  
20 ignore it, but it does feel like we're not going to approve the  
21 handbook today. I don't know, there's-- I see your sheets have a  
22 lot of handwriting on them. Is there a way we can revisit this?  
23 Maybe they share it with Mr. Laird and then we have another  
24 discussion at the next meeting. I'm just concerned about, you know,  
25 the new rules and having enough time for that.

26 **MS. URBAN:** Thanks, Mr. Le. I appreciate that, and I'll pick  
27 that up in just a second. But in response to Ms. de la Torre and  
28 Mr. Soltani, perhaps I am optimistic, but my sense is that there is

1 at least among majority of the Board, if not all of us, a desire  
2 for sort of on both sides, for there to be full communication and  
3 coordination. And there's an understanding of the difficulties it  
4 can cause when there's not. Now, peccadillos of the language aside,  
5 that is the intent of the communication section. Okay? What is not  
6 as overtly stated is the well, there is some that's stated, so  
7 there are some assumptions that, or some I would say some  
8 statements born of experience that often staff members will be best  
9 positioned to particularly between Board meetings, go places and do  
10 things. What is not stated that I know at least Ms. de la Torre has  
11 an interest in, is how we hear on the agency side what the Agency's  
12 kind of going to be doing? That conference that you and Mr. Soltani  
13 were talking about, you know, knowing in advance maybe that folks  
14 were going to be there from the Agency as well as the Agency  
15 knowing in advance that the Board's going to be there. So, on the  
16 Board side, again I will state my opinion and my request that folks  
17 be willing to give the staff a heads up if you're going to go  
18 somewhere that is reads on the Agency subject matter, for example,  
19 and give this the Agency staff a heads up. If you get media  
20 inquiries, I think that that is a very reasonable thing for us to  
21 do in order to support the Agency overall, the staff and our  
22 mission. And then with regards to the Board having a sense of where  
23 the Agency's going to be represented and what's going on and what  
24 the communications are, you know, we have to be thoughtful when  
25 we're traveling on the Agency's dime. But the other piece of that  
26 of course is knowing where we might need a Board member to go,  
27 where you know, there's going to be coverage. And I know you  
28 mentioned the Global Assembly coming up, for example, next month,

1 in the winter, we have the California Lawyers Association's Privacy  
2 Section meeting. There are a number of things that are kind of big  
3 events in the field. And I wonder if it wouldn't be in the travel  
4 section exactly, but in the communication section or in the  
5 calendar section, we add a standing item where we could hear from  
6 staff as just sort of what the plans are. And we could also talk  
7 about our own plans and if there is something like the Global  
8 Assembly, for example, we could find out amongst ourselves, who  
9 among the Board might be the best person to go.

10 **MS. DE LA TORRE:** My request, not for this meeting, but for the  
11 prior meeting, was to get an understanding from the agency as to  
12 what are the events that the Agency plans to attend. And I don't  
13 know where it fits within our six meetings, but that will be, I  
14 think, very helpful. Maybe it can come in the next Board meeting. I  
15 will very much like our Board to be represented by the Global  
16 Privacy Assembly. I cannot volunteer to go, it's in Bermuda, it's  
17 October 15, which speaks to, you know, if we don't know in advance,  
18 we cannot really get organized to volunteer to attend. So, I was  
19 just going to ask the other Board members if anybody might be able  
20 to plan an international trip in such a short notice. I'm afraid  
21 the answer is going to likely to be no. But is there any Board  
22 member that might have time in October to attend the Global Privacy  
23 Assembly with like three weeks' notice? You could-- you might be  
24 able to.

25 **MS. URBAN:** No, no, I'm saying not this year. I'm sorry.

26 **MS. DE LA TORRE:** Okay.

27 **MS. URBAN:** I'm sorry. Not this year. I do believe the Agency  
28 is going to be there, I think. Is that right? Like, so staff will

1 be there. We will have some representation. Mr. Le can't do it, Mr.  
2 Mactaggart or-- I think Mr. Worthe, I know enough about your  
3 schedule that it sounds unlikely.

4 **MS. DE LA TORRE:** So, this is what I would like to avoid for  
5 2024. So, if we are provided with this information ahead of time, I  
6 mean I'm not-- it's difficult to set up the time aside to even  
7 participate in these meetings and the subcommittee, so I understand  
8 that, you know, most of us might be able to do, at the most, one  
9 meeting a year and some years maybe none. But if we know in  
10 advance, we can make sure that we prioritize that. And I will  
11 suggest that the Global Privacy Assembly is the one meeting that  
12 one member of the Board, one of this should attend every year. We  
13 should try to make a commitment to make ourselves available to be  
14 there because it's really important to be present and get to meet  
15 our peers internationally in the major events. This is an event  
16 that has been held for 44 years since the 70s. There's a close  
17 session piece of the meeting where actually agencies get to have a  
18 candid conversation as to where they are in their processes, which  
19 I think is very valuable. And our presence, presence of the Board  
20 will be a statement of our commitment to be part of that  
21 international community. And unfortunately, I guess it won't happen  
22 this year, but hopefully we can make it happen in 2024.

23 **MS. URBAN:** Thank you, Ms. De Torre. I agree with the  
24 importance of the Global Assembly. And Mr. Mactaggart, did you  
25 shake your head? No.

26 **MR. MACTAGGART:** Oh, yeah. No, I can't. I can't. Unfortunately,  
27 I can't make it. But I would echo Mr. Le's point, I think--

28 **MS. URBAN:** Yes. So, one second, Mr. Soltani, and then I want

1 to talk about process.

2       **MR. SOLTANI:** Oh, yeah, absolutely. I wanted to confirm that we  
3 are going to the Global Privacy Assembly this year, and we'd be  
4 happy for the Board, you know, any of the Board members if you all  
5 decided one of the Board should go in our stead or in addition, the  
6 one thing I'll flag is that you know, I think this speaks to the  
7 earlier conversation of would you be rep-- you know, when staff go,  
8 we represent the Agency's position and the Agency's kind of in  
9 issues you voted on or rulemaking, et cetera. We typically don't  
10 color outside of those lines as an Agency representative. And so,  
11 if a Board member is going, it would arguably be on behalf of the  
12 Agency and therefore in coordination with what the Board have  
13 delegated and the Board have outlined. And so, I think that would  
14 be a, you know, I think a welcome piece. I will flag that, you  
15 know, in my experience, while it's true that you know, other  
16 commissioners and other agencies of particularly the international  
17 DPAs do attend, there has been issues in the past, for example,  
18 when the FTC sends a commissioner where they do color outside the  
19 line. So, depending on the commissioner that's sent, they take a  
20 particular interpretation of the agency's agenda or their approach.  
21 And for the international community, it can be confusing because  
22 often in the European structures, there's one commissioner, there's  
23 not five. And so, to be clear that if the, you know, that the  
24 commissioner that we send or the representative that we send is  
25 essentially representing the Board's position and not their own or  
26 not their own interpretation of the Board's approach, so really  
27 important.

28       **MS. URBAN:** Thank you Mr. Soltani. So, here's what I'd like to

1 do with the handbook. I really appreciate sort of all the  
2 thoughtful attention to the handbook and to the language. I very  
3 much appreciate Mr. Laird and staff's work in putting this  
4 together. I know they also attended to it very carefully. And I  
5 appreciate Board members here with it. What I would like to avoid  
6 happening in the future is that we start from the top again.  
7 Because I really think that it is incumbent upon us as the Board to  
8 focus in on the things that are the sort of important policy  
9 issues. Now, this is how we agree to interact with each other. So,  
10 I think there's, you know, more room for full-- there's always room  
11 for full discussion, but that particular kind of full discussion on  
12 this handbook. But we have thoroughly discussed a lot of this, and  
13 we have thoroughly discussed a lot of the policies. So, what I  
14 would like to do is to, over lunch, I'll sit down with Mr. Laird  
15 and see if I can identify the sections that we have been through,  
16 that hopefully we can agree on today so that we don't have to bring  
17 the whole handbook back. And, of course, that won't sound like be  
18 the media policy, and we can recall the item at lunch. And then at  
19 the end of that process, in order to comply with Bagley-Keene and  
20 allow for full feedback to the extent the Board members haven't  
21 been able to offer it, given the time today, that it will-- I mean,  
22 I can't say that, you know, this is something that Mr. Laird put  
23 together for us from our previous conversations, and other sources.  
24 But I will-- we will all be clear that I am out of the loop, so  
25 that folks can have one-way communications with Mr. Laird in order  
26 to give any detailed feedback and then he can compile that into the  
27 pieces that we haven't managed to agree on today for future  
28 conversation. Is that legally-- Did I-- am I within the legal

1 lines?

2 **MR. LAIRD:** You sure are.

3 **MS. URBAN:** Okay. So, that's what I would like to do. And you  
4 can mull that if you'd like, but I'm going to table this issue for  
5 now to recall after we come back from lunch, after I have a chance  
6 to talk to Mr. Laird.

7 **MS. DE LA TORRE:** I have a question on the proposed approach.  
8 So, are we saying that we are going to vote on part of the book?

9 **MS. URBAN:** Yes, because I don't want to talk about the whole  
10 thing again.

11 **MS. DE LA TORRE:** Well, but I don't-- I think that we should  
12 approve it as a whole, not like a section now. And because they're  
13 all interrelated, so I don't see the wisdom of bringing it to both  
14 these.

15 **MS. URBAN:** I am simply attentive to the fact that we have  
16 brought this handbook before the Board twice, and each time it has  
17 been a very long conversation, which is valuable because people  
18 have valuable insights. But to the extent that we have solidified  
19 something, it would be good to be able to actually solidify it and  
20 to focus our attentions as a group a little bit more when we're in  
21 a public meeting.

22 **MS. DE LA TORRE:** My concern is that it might be confusing to  
23 even understand what pieces we're voting on, and we can actually do  
24 it as a whole at the end of the process--

25 **MS. URBAN:** I agree, but that has not been how it has worked in  
26 practice. There has always been something else to discuss. So, I  
27 mean, I have every faith that the Board can keep track of different  
28 sections. Now, it may not be possible. I mean, I may talk to Mr.

1 Laird and, you know, there are too many open items on some of the  
2 other things, but I think until we got to section five or section  
3 six, whatever it was, you know, we made a few amendments, but we  
4 were in agreement so why can't we just be in agreement on that?  
5 That is--

6 **MS. DE LA TORRE:** Well, we vote on the amendments without  
7 seeing the drafting. That's what is confusing. Like, to vote on  
8 something that you cannot read because I don't think that we can  
9 draft the edits.

10 **MS. URBAN:** No, that's a question of trust in Mr. Laird to, you  
11 know, reproduce our intent. Yes, Mr. Mactaggart?

12 **MS. DE LA TORRE:** I just don't know how you vote on something  
13 that you can't read.

14 **MS. URBAN:** Oh, sorry, Ms. de la Torre, I thought you were  
15 done. Mr. Mactaggart?

16 **MR. MACTAGGART:** I'm happy to keep an open mind, but I do want  
17 to say that I feel like even from the public's point of view, being  
18 able to have advanced notice of what was on the agenda and be able  
19 to review it, I think that six, I mean, I haven't been through all  
20 my changes. I, in the interest of time, I took them to place  
21 comment to heart. I could go through them all, but I prefer not to.  
22 And so, my gut says sure, there may be some stuff at the beginning,  
23 you know, either was one, two, and three or something like that.  
24 But I do feel like there's quite a bit of change here to six and  
25 seven. But so, I--

26 **MS. URBAN:** In that case, it's definitely more efficient. And  
27 it would be permissible for Board members to have one-way  
28 communications with the general counsel, correct?

1           **MR. LAIRD:** Yes.

2           **MS. URBAN:** Thank you. All right, so my question now is how  
3 hungry are people? Because we could break for lunch at this moment,  
4 or we could talk about the next agenda, item number seven, which is  
5 a delegation to the executive director, an annualized piece of  
6 business, and do that before we have lunch. But if people need  
7 lunch, we can have lunch.

8           **MS. DE LA TORRE:** I would prefer to go forward with the items  
9 so that we have after lunch, the new CCPA Rules Subcommittee. We  
10 anticipate that we're going to need time for that. And it would be  
11 good to know that all of the time after that is dedicated to that  
12 basically.

13           **MS. URBAN:** Alright. So, in that case-- Yes, Mr. Laird?

14           **MR. LAIRD:** Just for clarity, are we planning to return to this  
15 item because we have not yet taken public comment, and so, we are  
16 going to not return?

17           **MS. URBAN:** We will return.

18           **MR. LAIRD:** Okay, very good.

19           **MS. URBAN:** Because you and I are going to confer.

20           **MR. LAIRD:** Okay, very good.

21           **MS. URBAN:** Alright. Yeah, thank you. So, we will leave item  
22 number six for the moment. We will return, I anticipate, briefly at  
23 a later time and we'll take public comments at that time. With  
24 that, let's move please to the delegation of authority to the  
25 executive director, which is agenda item number seven. I believe  
26 there's a short memo and that there's the delegation language in  
27 your materials for today. If you wouldn't mind turning your  
28 attention to that, I would appreciate it. This is on our annualized

1 calendar at the moment because we've been doing it on a year to  
2 year basis. You will find that the brief memo recommends that we  
3 shift to a more continuing delegation at this point, and that  
4 recommendation and briefing will be presented by Mr. Laird. Mr.  
5 Laird, please go ahead.

6 **MR. LAIRD:** And in the interest of time, I, I do think the  
7 cover memo is fairly self-explanatory. Again, this is an annual  
8 delegation we've done for the executive director to date. However,  
9 I think the issue becomes, you know, each time you set a year out  
10 delegation, if we don't hold a meeting in time and we didn't  
11 prepare the delegation, there's always a potential, there's a lapse  
12 in the delegation. And given that this has been a pretty rote  
13 process for the past two years, I think we are suggesting that this  
14 delegation be made ongoing unless amended or rescinded by the  
15 Board, which could happen at any time. And again, if two Board  
16 members requested that at a future meeting, it would have to be  
17 agendized, in fact. So, that's the recommendation is that we move  
18 away from an annual renewal to ongoing and less amended or  
19 rescinded.

20 **MS. URBAN:** Thank you, Mr. Laird. And otherwise, this is a  
21 delegation that we have been giving to the executive director. I  
22 see, it looks like we've removed the language about the starting up  
23 of the agency, which yay! We're making progress. And I see that  
24 you've incorporated some specific other delegations that we've made  
25 to the executive director that have to be made individually. But  
26 sort of in substance, this is the delegation that we have been  
27 offering. Yes.

28 **MR. LAIRD:** That's correct. And those are the two exact

1 provisions. Yes.

2 **MS. URBAN:** Okay. Thank you very much. This strikes me as  
3 practical. Comments and-- yes, Mr. Worthe?

4 **MR. WORTHE:** I just had a question for Mr. Laird. Do you see  
5 any overlap with this item in article four in the prior-- because  
6 when I read them both, I kind of, I thought this both relates to  
7 roles of the executive director. Maybe I'm being too broad.

8 **MR. LAIRD:** It's a good observation. I think a way I could  
9 state this is that the language I think in section four really  
10 reflects what has been this ongoing delegation, and it's sort of  
11 representative of that fact, but--

12 **MR. WORTHE:** And this just preserves it, I guess, going  
13 forward.

14 **MR. LAIRD:** This would be-- Yes, exactly. For clarity.

15 **MS. URBAN:** Thank you Mr. Worthe, Mr. Laird. Other comments?

16 **MS. DE LA TORRE:** On the incorporation by reference of the  
17 delegations of July 14, I remember there was language in the  
18 delegation around certain key positions being brought back to the  
19 Board. Is that still in or are we eliminating that? What does that  
20 mean, this new drafting in terms of that?

21 **MS. URBAN:** I wouldn't change that. Right, Mr. Laird?

22 **MR. LAIRD:** Yeah, I think the purpose was to incorporate those  
23 delegations exactly as they were made in July so that--

24 **MS. URBAN:** Along with their limitations, well, it says  
25 specific and limited delegation.

26 **MR. LAIRD:** So, to the extent, there was sort of specific  
27 parameters to the appointment at that, that were voted upon at that  
28 meeting, those are incorporated into this delegation. And so, those

1 directions still stand for the director.

2 **MS. URBAN:** I believe Ms. de la Torre, I could be not reading  
3 your mind, but I think you may be thinking of the chief auditor?

4 **MS. DE LA TORRE:** Like, it would have been easier to draft it  
5 here for us in terms of reference as opposed to referring to  
6 something. I mean, this goes to my whole comment on can we have a  
7 list of the things that we've voted on, but I'm comfortable if we  
8 are not changing the delegation and we are just making it  
9 permanent, so it doesn't have to come every year. I'm comfortable  
10 with moving this forward. I think it just might be helpful to have  
11 one delegation that's in one document as opposed to like a  
12 delegation that refers to another delegation in terms of drafting.  
13 So, I'm comfortable with maybe to the church point before of  
14 trusting our general counsel with redacting. I don't know if it's  
15 possible here but approving it as is and just can we generate one  
16 that we can read and has everything included as opposed to a cross-  
17 reference, that would be helpful.

18 **MS. URBAN:** Well, we might also offer more specific delegations  
19 to the executive director through the year. So, this sort of  
20 functions as the day-to-day plus what we know. Now, Ms. de la  
21 Torre, please hold that thought, because I want to ask Mr. Laird if  
22 something would actually be okay legally and would be clear what  
23 the delegations are and then ask Ms. de la Torre if it would meet  
24 her needs, which is maybe we could have like a reference document  
25 that collects the delegations to the executive director. Well, I  
26 guess, or to anybody else that we sort of keep going. Sorry, I  
27 mean, I'm being unclear. So, this is our legal statement delegating  
28 to the executive director. It incorporates by reference a more

1 specific and limited legal statement that we made in July. And in  
2 order to honor Ms. de la Torre's request, sort of generally for  
3 kind of a quick reference and clarity as to what's been delegated  
4 and to allow for the fact that in future meetings we may have other  
5 specific delegations to make to the executive director, for  
6 example, rulemaking is one that we've needed to do before, but  
7 other things could come up, that we have a document in which we  
8 just kind of have the current delegations collected so they could  
9 be referred to easily.

10 **MR. LAIRD:** I see. Yes, we could prepare a document that  
11 maintains all.

12 **MS. URBAN:** Okay, thank you. And would that work, Ms. de la  
13 Torre?

14 **MS. DE LA TORRE:** Tie this to the prior point. Maybe the policy  
15 handbook is a space to, you know, kind of have that collection of--  
16 I don't know if it's the right space, but it will be good document.

17 **MS. URBAN:** Thanks Ms. de la Torre. Mr. Mactaggart, I thought I  
18 saw your hand.

19 **MR. MACTAGGART:** You've solved it, as long as, I think you  
20 could just attach, frankly, the June 14 limitation document to  
21 this, then that would be fine.

22 **MS. URBAN:** Okay, thank you. Mr. Worthe, I believe already  
23 commented. Mr. Le? All right. In that case, I would like to request  
24 a motion-- hang on. I write them down just because if they,  
25 particularly if they get long, I don't want to leave anything out.  
26 So, I'd like to request a motion to approve the delegation to the  
27 executive director provided as attachment A to the materials for  
28 this agenda item with an attachment of additional delegations that

1 exist or as they arise.

2 **MS. DE LA TORRE:** I move.

3 **MS. URBAN:** Thank you, Ms. de la Torre. Thank you, Mr. Le. I  
4 have a motion and a second. At this time, I would like to ask Mr.  
5 Sabo if there's any public comment on this agenda item.

6 **MR. SABO:** This is for agenda item 7, the Delegation of  
7 Authority to the Executive Director. If you'd like to speak on this  
8 item at this time, please raise your hand using Zoom's 'Raise Hand'  
9 feature or by pressing \*9 if you're joining us by phone. This is  
10 for agenda item 7, Delegation of Authority to the Executive  
11 Director. Again, please raise your hand using Zoom's 'Raise Hand'  
12 feature or by pressing \*9. Madam Chair, I'm not seeing any hands.

13 **MS. URBAN:** Thank you very much, Mr. Sabo, and thank you for  
14 the Board for the discussion. The motion on the table is to approve  
15 the delegation to the executive director as provided in attachment  
16 A to the materials for this agenda item along with agenda capturing  
17 any other limited delegations that exist or may arise. Mr. Sabo,  
18 would you please call the roll call vote?

19 **MR. SABO:** Yes. Board member de la Torre?

20 **MS. DE LA TORRE:** Aye.

21 **MR. SABO:** de la Torre, aye. Board member Le?

22 **MR. LE:** Aye.

23 **MR. SABO:** Le, aye. Board member Mactaggart?

24 **MR. MACTAGGART:** Aye.

25 **MR. SABO:** Mactaggart, aye. Board member Worthe? Worthe aye.

26 Chair Urban?

27 **MS. URBAN:** Aye.

28 **MR. SABO:** Urban, aye. Madam Chair, you have five ayes and no

1 noes.

2 **MS. URBAN:** Thank you very much. The motion carries with a vote  
3 of 5-0. My thanks to the Board. And I will ask staff to implement  
4 our request and vote today. With that, it is almost 12:30, and so  
5 we will at this point break for lunch. During lunch, we will take  
6 out of order closed session item number 11. Pursuant to Government  
7 Code section 11126(e) (1) and (2) (A), the Board will meet in closed  
8 session to confer and receive advice from legal counsel regarding  
9 the following matters. The first is California Chamber of Commerce  
10 v. California Privacy Protection Agency, et al. And the second is  
11 California Privacy Protection Agency et al. v. the Superior Court  
12 of the State of California for the County of Sacramento, California  
13 Chamber of Commerce. Before the Board departs for our closed  
14 session discussion, is there any public comment on this item? Mr.  
15 Sabo?

16 **MR. SABO:** This is for agenda item 11, Closed Session. If you'd  
17 like to speak at this time, please raise your hand using Zoom's  
18 'Raise Hand' feature or by pressing \*9 if you're joining by phone.  
19 This is for agenda item 11, Closed Session. Madam Chair, I'm not  
20 seeing any hands.

21 **MS. URBAN:** Thank you very much Mr. Sabo. With that, the Board  
22 will take a break for lunch in the sense that we will leave the  
23 room, we will be going into closed session. For the information of  
24 those who are on Zoom, we will not return before 1:30, so you can  
25 step away if you would like. But please, you know, have patience if  
26 it takes us longer than that. I just want to be sure that you feel  
27 comfortable, that you can step away for a certain period of time.  
28 With that, the Board will step out for closed session, and we'll

1 look forward to seeing you when we return.

2 [recess]

3 **MS. URBAN:** Ready to go? Wonderful. Thank you, Mr. Sabo.

4 Welcome back everyone. The California Privacy Protection Agency  
5 Board meeting for September 8, 2023, is now resuming from closed  
6 session. Thanks to everyone on the Board and the public for joining  
7 us this afternoon. The first thing I'm going to do is recall agenda  
8 item number six, which is a discussion of the Board handbook, which  
9 we've had a, a robust discussion today. What I'm going to propose  
10 is first of all, to name one thing in particular where I think we  
11 have general consensus so that staff will understand that, which is  
12 to, for a meeting either in December or earlier in the year, to  
13 have a presentation from the Board, excuse me, from the staff to  
14 the Board about upcoming Agency events and the opportunity for the  
15 Board to understand the broad strokes of the plan for staff and for  
16 us to discuss Board member participation, if there are events where  
17 it would be attractive for Board members to attend. I do want to be  
18 clear that, you know, of course things come up on an expedited  
19 basis sometime, and I didn't understand that anybody was thinking  
20 that that wouldn't be something that staff would still have  
21 discretion to do. We just want to talk about it and be able to talk  
22 about our own participation. So, I'm seeing sort of assenting nods,  
23 I just wanted to check in on that because it wasn't as apparent in  
24 the text as the other things. And then beyond that, I propose that  
25 we table the discussion of the Board handbook, that we clarify that  
26 the Board handbook is in the hands of our general counsel for  
27 purposes of Bagley-Keene and for those who have specific comments  
28 that they haven't yet made, that they have individual conversations

1 with Mr. Laird. Mr. Laird is going to take the discussion we've had  
2 today in which we did make quite a fair bit of progress, and he's  
3 going to use that to do revisions to the handbook. And he will also  
4 then take into consideration additional comments from individual  
5 Board members. And we will bring this item back probably on the  
6 December 8 meeting in order for us to finish our discussion. Does  
7 that meet with-- does anybody have any objections?

8 **MS. DE LA TORRE:** I want to comment that I know our staff is  
9 really busy with a lot of things. One of them, the item that we are  
10 going to discuss, the rules, and I just wanted to get general  
11 consensus on the fact that the staff should prioritize the rules in  
12 case of, you know, there's not enough time if this book has to be  
13 pushed to the following meeting because of just availability, I  
14 will be perfectly okay with that. I think the rest of the Board  
15 will be perfectly okay with that. So, just give them an idea of we  
16 don't want you to burn out, we want you to have quality of life,  
17 and if that means that this has to wait two months, let's  
18 prioritize the rules. Can we have maybe general agreement around  
19 that?

20 **MS. URBAN:** I'll leave this to the discretion of staff. I know  
21 they're also looking for a little more certainty around  
22 communication. So, I think, you know, we definitely need to  
23 prioritize the rules and with Ms. de la Torre's helpful observation  
24 that, of course, we want you to prioritize things such that you can  
25 have a life and do the work of the Board, we'll ask you when it  
26 makes sense to talk about it again.

27 **MR. LAIRD:** I appreciate having that discretion. One thing I  
28 may request though is if we could have some sort of deadline, I may

1 propose two weeks from now by which Board members could provide me  
2 their feedback, if there's any, on the handbook, that's just one of  
3 the things that could kick out the timeline if I'm not getting  
4 feedback until just a week before the next meeting, that would  
5 cause an issue. So, would two weeks sound fair for our Board  
6 members to provide me any additional feedback they had on the  
7 handbook?

8 **MS. URBAN:** My part, sure. Yes. Yes. I can't see everybody's  
9 sound.

10 **MR. MACTAGGART:** Yeah.

11 **MS. URBAN:** Okay.

12 **MS. DE LA TORRE:** I will do my best, but I know that we also  
13 have to work on the rules, so I will prioritize the rules with, you  
14 know, meeting both deadlines because we still have another chunk of  
15 rules that we have to--

16 **MS. URBAN:** Alright. So, thank you, Ms. de la Torre. Do your  
17 best. Eventually, the train will leave the station, but we  
18 certainly appreciate that you need to work on the rules. Alright,  
19 thanks everyone for the robust discussion on that. At this point,  
20 Mr. Sabo, I'd like to ask if there's any public comment on this  
21 agenda item, which is a recall of the discussion of the Board  
22 handbook if you need to refer to materials.

23 **MR. SABO:** This is public comment for agenda item 6. If you'd  
24 like to make any comment at this time, please raise your hand using  
25 Zoom's 'Raise Hand' feature, or by pressing \*9 if you're joining us  
26 by phone. Again, this is for agenda item 6, Board and Agency  
27 Policies and Practices Board Handbook. Madam Chair, I'm not seeing  
28 any hands at this time.

1           **MS. URBAN:** Thank you Mr. Sabo, and thanks so much to the Board  
2 again for the discussion. With that, we will move to agenda item  
3 number 8, which is an update from the New CPRA, that is, California  
4 Privacy Rights Act Rules Subcommittee. This will be presented by  
5 Board members de la Torre and Le and staff attorneys Kristen  
6 Anderson and Neelofer Shaikh in our Legal Division. Again, we have  
7 materials to refer to under this agenda item, and I'd ask you to  
8 please refer to those. And with that, I will turn it over to  
9 whomever from that group is planning to speak first.

10           **MS. DE LA TORRE:** Thank you. I'm going to start and then give  
11 you initially kind of some information on what we hope to  
12 accomplish today and what is coming. And then we are going to go  
13 through both drafts. I will take the lead on the cybersecurity  
14 draft. Mr. Le is going to take the lead on the risk assessment  
15 draft, and we will go item by item just taking comments that we  
16 might hear from other members of the Board on that. So, in terms of  
17 expectations, and this is our kind of combined set of expectations  
18 that we might or might not be able to prioritize depending on how  
19 much feedback we get from the Board. But our hope was that we will  
20 get to review completely both drafts in this meeting. I know that  
21 we have to end this meeting around four probably. So, if we don't  
22 get to the end of the risk assessments, we can bring it back on  
23 another meeting. But we were hoping to be able to get through both  
24 documents and work through the feedback, take notes, work through  
25 the feedback that the Board members will provide to bring either  
26 updated versions of the drafts or a final version of the draft to  
27 the next meeting, which is scheduled to happen in November, but I  
28 understand it might be moved to December. I wanted to also

1 highlight a few things in terms of the approach that we're  
2 following for these set of rules versus the approach that we follow  
3 in the prior set of rules. So, the first thing that I wanted to  
4 highlight is that this conversation, this Board conversation is  
5 happening before we start the formal rulemaking process. Once we  
6 start the formal rulemaking process, there's a number of mandated  
7 obligations under California administrative law. I do not know all  
8 of them. We have a general counsel that is an expert. If anybody  
9 wants more detail, he will be the person to connect with. But one  
10 thing that I do remember from the last effort is once we start the  
11 formal rulemaking, we have an obligation as an agency to log every  
12 comment that we have and respond to any comment that we receive.  
13 And that includes comments that might come to us individually. So,  
14 we are not there yet. We will be there once we finalize and receive  
15 the feedback from the Board and hopefully have five votes on the  
16 drafts that are supported by the Board, and we move them forward to  
17 formal rulemaking, which checking with the chair, I understand  
18 we'll need a vote. So, we are not there yet.

19 **MS. URBAN:** That's correct. Sorry, just for clarity's sake, are  
20 you hoping that we approve these to go into formal rulemaking  
21 today?

22 **MS. DE LA TORRE:** No, no, no. That's the clarification that I  
23 wanted to make.

24 **MS. URBAN:** Okay.

25 **MS. DE LA TORRE:** My hope, our hope is to take feedback and  
26 come back in the next Board meeting with these two drafts,  
27 including the feedback that we take in plus a draft that's missing  
28 here, which is the draft on automated decision-making. We are just

1 not at the point where a subcommittee can present. So, I just  
2 wanted to set the expectations for the Board that we don't  
3 anticipate that we will have a final draft ready to move forward  
4 into the rulemaking at this meeting, probably not at the next  
5 meeting, because we still have to bring one piece that's missing.  
6 Hopefully, you know, in the following meeting. So, we can create as  
7 much space as we need to intake the feedback of the Board. And that  
8 should happen before we move into formal rulemaking.

9 **MS. URBAN:** I see. I think that it might be a little easier. I  
10 don't know that we have to talk. I don't know that we have to have  
11 all three pieces at the same.

12 **MR. LE:** Can I chime in?

13 **MS. URBAN:** Yes, Mr. Le?

14 **MR. LE:** So, there is a possibility that, you know, everyone  
15 loves the cybersecurity audit, cybersecurity regulations today, for  
16 example. We have minor edits. We go to November, we could approve  
17 just that to go to official rulemaking package, formal rulemaking  
18 package, holding off on maybe risk assessments if it's not ready,  
19 ADMT if it's not ready.

20 **MS. URBAN:** Understood.

21 **MR. LE:** But I think, you know, earliest case scenario, today,  
22 for cybersecurity audits, if everything goes, you know, there's no  
23 edits, but probably the next Board meeting.

24 **MS. URBAN:** Alright, there is another possibility that I would  
25 just like to put on the table, which may or may not help our  
26 conversation today, which would be that we have a conversation  
27 today and we're far enough along, like we're not at the point of  
28 coming back necessarily with the final, we're making language, but

1 we're far enough along that these pieces, again, sort of move to  
2 staff and any more detailed thoughts. Because sometimes I have very  
3 detailed thoughts. I just think are not worth everybody's time in a  
4 public meeting would be submitted to staff who would then come  
5 back. But it would mean that, again, for Bagley-Keene purposes, we  
6 would have a little bit of a process bifurcation. And the work  
7 would pass to staff with one way input to the Board. One of the  
8 reasons that is potentially attractive to me, I mean, we get into  
9 the subject of discussion on a more, is because I'm very interested  
10 in, for example, what they learn about economic impact, and all of  
11 that kind of work needs to happen at the staff level. So anyway, I  
12 just want to put that on the table. So that's also a possibility  
13 and it might help us.

14 **MS. DE LA TORRE:** That's helpful. And we will appreciate having  
15 the flexibility to bring that idea to staff and come with a more  
16 baked process in the next Board meeting because we have not  
17 discussed how that will function, but that's a possibility. Once we  
18 talk about the rules, we are aware of the need for the impact  
19 assessment in terms of this--

20 **MR. LE:** --economic impact--

21 **MS. DE LA TORRE:** --economic impact assessment in terms of this  
22 set of rules. So, we feel, or, you know, we feel strongly that  
23 before voting to move this forward, it will be a good idea to bring  
24 to the Board an idea what that number is. So, that's another  
25 consideration, right? Like, should we have an idea of what's the  
26 economic impact before we move to-- able to move them forward. But  
27 the comments of the chair are very appropriate and we just-- I  
28 think it will be helpful if we can discuss with the staff how that

1 can be actually implemented.

2 **MS. URBAN:** I'm just attentive to the fact that were we to move  
3 forward to the extent that we would have one-way communications  
4 with staff, as with the Board handbook, we need to know that that's  
5 happening so that we can have an appropriate bifurcation for  
6 Bagley-Keene purposes.

7 **MR. LE:** Yeah. And I get that. I think, you know, we want to  
8 open it up so that the rest of the Board can provide staff input on  
9 these rules too. So, I'm not opposed to that.

10 **MS. URBAN:** Well, anyway, we should probably get--

11 **MR. LE:** We should-- [crosstalk] Yeah, yeah.

12 **MS. DE LA TORRE:** Okay. So, the last thing that I wanted to  
13 mention before we start going through the cybersecurity rules is  
14 that these rules are I think strong, but they have not, you know,  
15 accounted for everything. We have staff availability limitation. We  
16 also want to be efficient in terms of finalizing this processes as  
17 soon as possible. So, we just wanted to flag for the Board that  
18 there might be a need to revise these rules in the future to  
19 address specific topics. One that I can use as an example for cyber  
20 security, in the context of, for example, domestic violence, there  
21 are situations where there can be abuses that are related to the  
22 way cyber security is addressed by organizations. I just,  
23 personally, having to have a conversation with somebody who was an  
24 advocate that was talking to those points. And, you know, there are  
25 points that could be worth addressing that there are many impacting  
26 a smaller subset of the community that we just have not had the  
27 ability to fully integrate into the rules. But we hope that, you  
28 know, future revisions of the rules can more specifically address.

1 So, if we start in page two, we are just reproducing our statutory  
2 provision for reference to the Board. This is the delegation of  
3 rulemaking that is connected with this particular set of rules,  
4 cyber security rules. When you move to page three, we have two  
5 different statutes that we quote. The first one is reasonable  
6 security. There's a reasonable cybersecurity requirement embedded  
7 in our law, and that applies across the Board to all organizations  
8 that are subject to the law. This set of rules doesn't modify that.  
9 What it does is it adds an additional obligation on a subset of  
10 organizations that are subject to the law to not only keep  
11 reasonable security, but also perform an audit of their  
12 cybersecurity program and document that audit. The statutory  
13 language is pretty clear. If there's any questions about it, we can  
14 entertain them, but I think that we can probably move forward to  
15 definitions if everybody's okay with that. The section on  
16 definitions just adds the definitions that are relevant to this  
17 subset of rules and modifies a few other sections like service  
18 provider and contractors and contract requirements for service  
19 providers to account for the new subset of rules that will deal  
20 with cybersecurity audits. I don't believe that any of the  
21 definitions are out of the kind of intuitive definition that you  
22 have for the terminology. It's just important in terms of clarity  
23 and to comply with the obligations that we have to go through  
24 formal rulemaking and get the approval of the office of  
25 administrative law to be clear about what we're talking about,  
26 which is why these definitions need to be added in the opinion of  
27 the staff.

28 **MS. URBAN:** May I ask a question? What does this mean: "draft

1 cybersecurity audit regulations excerpts."

2 **MS. DE LA TORRE:** Yes.

3 **MS. URBAN:** Excerpted from? Are there more we're not seeing?

4 **MS. DE LA TORRE:** Well, because we are not reproducing the  
5 whole section on definitions here.

6 **MS. URBAN:** You mean excerpts from the rules?

7 **MS. DE LA TORRE:** Right.

8 **MS. URBAN:** All the rules, the whole section.

9 **MS. DE LA TORRE:** Right. Like 7001 has a lot of definitions  
10 that are not here. We're just reproducing the ones that we will be  
11 adding as part of these.

12 **MS. URBAN:** Okay. Thank you.

13 **MS. DE LA TORRE:** Any more questions?

14 **MR. MACTAGGART:** How would like to handle this? Excuse me.  
15 Would you like-- Hello. Hello. How would you like to handle this,  
16 Ms. de la Torre? Would you like us to stop you at every section  
17 where we have comments?

18 **MS. DE LA TORRE:** Yes, I think that would be ideal to have  
19 comments for every section. So, if you have comments on the  
20 definitions, let us know now.

21 **MR. MACTAGGART:** Yeah, I did. I think it would be helpful to  
22 consider defining access because there is a case in California  
23 where when the data was stolen, it was held that unless you could  
24 prove that every single record in the data had been accessed or  
25 like, viewed by the perpetrators, it was not accessed. And I can  
26 give you the people who know more about this than I do. But I  
27 remember when drafting it, that's why we have this whole thing  
28 around exfiltration in section 150. So, if you somehow included the

1 concept of theft in there, which you don't, illegal access, you  
2 think of it as theft, but it may be important. I can point you to  
3 an expert who can kind of clarify that, but that's one suggestion I  
4 might have there.

5 **MS. DE LA TORRE:** I appreciate the comment. It seems like it's  
6 something very technical, and perhaps it will be best handled by  
7 staff. So, if there's an expert that you believe our staff should  
8 consult with, will it be okay with our general counsel if we  
9 indicate member Mactaggart to either reach out to you or reach out  
10 to staff with the reference of the expert and just have an internal  
11 consideration as to whether access needs to be defined, will that  
12 be appropriate?

13 **MS. URBAN:** That depends on process.

14 **MR. LAIRD:** It depends a little bit on process. I think if  
15 we're heading in that direction.

16 **MS. URBAN:** I mean, if we are going to put this in the hands of  
17 staff, then we can have one-way communications between Board  
18 members and staff.

19 **MR. LE:** Take it out of the subcommittee process.

20 **MS. URBAN:** Yeah, exactly. Otherwise, Mr. Mactaggart should  
21 probably offer it now.

22 **MR. MACTAGGART:** Yes.

23 **MS. DE LA TORRE:** Okay. So let me repeat back to make sure that  
24 I understand. So, for us as a committee to bring it into  
25 consideration, Mr. Mactaggart should just provide the whole context  
26 right now during the Board meeting. Is that what you're saying?

27 **MR. LAIRD:** That's correct. Otherwise, the issue is we-- if  
28 staff received the direction, we could not then come to you

1 privately as a subcommittee.

2 **MS. DE LA TORRE:** And I think that would be fine for the  
3 subcommittee. I think that we could delegate that if the staff  
4 could take the input and decide whether access should be added to  
5 the definition.

6 **MR. MACTAGGART:** It's really illegal access to include theft.

7 **MR. LE:** Yeah, so letting you talk to--

8 **MS. DE LA TORRE:** Yeah. So, let Mr. Mactaggart work with his  
9 staff on the possibility of adding that definition independently.  
10 Will that be compliant?

11 **MR. LAIRD:** Yes.

12 **MS. DE LA TORRE:** Okay. So that's perfect. That avoids--

13 **MR. MACTAGGART:** Thank you.

14 **MS. DE LA TORRE:** Okay. Any more comments on the definition  
15 section? Okay. So, let's move on to page five. And the first  
16 section here, 7120 really talks about "who," meaning, who gets to  
17 be required to conduct these cybersecurity audits. We had a little  
18 bit of a conversation about this in the prior meeting. And the idea  
19 is basically how do you set threshold to ensure that these  
20 obligations?

21 **MR. LE:** Page six, right?

22 **MS. DE LA TORRE:** Page six. Did I say seven?

23 **MR. LE:** You said five.

24 **MS. DE LA TORRE:** Page six. Thank you.

25 **MR. LE:** Yeah.

26 **MS. DE LA TORRE:** Who is required to comply with these  
27 obligations? In that conversation that we had, we took the feedback  
28 from the chair who was present at the meeting. After presenting our

1 idea, which is basically this. In terms of who gets to conduct this  
2 audit, we are creating two categories. If you are a data broker,  
3 basically a business that meets the threshold set in Civil Code  
4 1798.140, this means you derive 50 percent or more of your annual  
5 revenue from selling or sharing consumer personal information, then  
6 regardless of your size, you're required to commit to this  
7 obligation to conduct a cybersecurity audit. The reasoning behind  
8 that from the subcommittee is that for an organization that's  
9 really selling data, it's fair to make it require to conduct a more  
10 in-depth cybersecurity audit, since that's what they are  
11 monetizing. It's fair to ensure that they have committed to high  
12 standards of cybersecurity, and they can prove through this  
13 cybersecurity audit that actually they're following up with that  
14 commitment. And so that's step number one. If you're in that  
15 category of organization, that there rise 50 percent of your  
16 revenue from selling or sharing, you have to do a cybersecurity  
17 audit. Now, step two is to decide outside of that universe of  
18 organizations that derive 50 percent of their annual revenue, who  
19 else should conduct a cybersecurity audit? In making a  
20 determination there with the subcommittee considered is that there  
21 could be a small and medium-sized organizations that are subject to  
22 our law, that of course should comply with the obligation to keep  
23 their information secure. But for them, the audit cost of  
24 conducting a cybersecurity audit might not be justified because you  
25 know, they just are not big enough to necessarily sustain that  
26 obligation. So, this is a major policy decision that we have to  
27 make in terms of who we exclude from the obligations, from the  
28 cybersecurity audit obligation. And we wanted to have a little bit

1 of a conversation with the Board. We are setting up options. How  
2 could we set the threshold to basically ensure that the small and  
3 medium-sized organizations do not have this additional annual cost  
4 of conducting an audit? The option one that we highlight is we  
5 could think about how many records of consumers, meaning California  
6 residents, you process. And that could be just personal information  
7 in general. It could be sensitive personal information. It could be  
8 information of minors. Option two talks about something that's more  
9 clear cut, which is what's your annual gross revenue? This is one  
10 of the thresholds in our law, actually. If you have \$25 million,  
11 that is one of the thresholds that will require you to be subject  
12 to CCPA. The last one is the number of employees. There is no  
13 perfect solution to really identify you know, your risks in a way  
14 that's--

15 **MR. LE:** --ideal--

16 **MS. DE LA TORRE:** --ideal. So, we just bring in options for  
17 consideration of the Board. I'm just going to state kind of the  
18 pros and cons, but also, I would like to invite our staff to give  
19 their thoughts on this. So, the option number one, the threshold  
20 set on the base of number of records of consumers that you process  
21 has that added component of, "okay, of course, if you process more  
22 information of Californians, we might be more concerned about how  
23 you are securing that information." It has the minus side of,  
24 there's a cost to even figuring out how many records of consumers  
25 you process, how many of them are sensitive. Some small  
26 organizations might find it difficult to identify whether they have  
27 to comply or they don't have to comply. Also, from the point of  
28 view of enforcement, you know, the agency doesn't know there's no

1 record of how much personal information organizations process. So,  
2 you have to kind of rely on their own determination on how many  
3 records they process. Option two and option three are more clear  
4 cut. I mean, there's a number for the annual gross revenue of an  
5 organization. There is a number for the number of employees. So,  
6 it's easy to identify whether you're required to comply or not  
7 required to comply. But it's a little disconnected to the actual  
8 volume of information that you are responsible for. So, with that,  
9 I'm going to pause. I'm going to invite our staff to join us and  
10 present maybe with more detail on those benefits and cons. And then  
11 maybe we can have a conversation. Our goal is to not necessarily  
12 identify the number, and we can think about whether it is, you  
13 know, 100,000 consumers or 150,000, but it is just identify the  
14 method. That will be really helpful. Because once we identify the  
15 method, I think that we will be in a very good position to do what  
16 our chair suggested, which is advance the process of obtaining  
17 economic assessment of the rules and get a very-- a more accurate  
18 understanding of what will be the cost of enacting the rules. Thank  
19 you.

20 **MS. KRISTEN ANDERSON:** Thank you. Okay.

21 **MR. LAIRD:** I'll pass it over to Kristen Anderson.

22 **MS. ANDERSON:** Thank you. Okay, so with option one, as an  
23 initial matter, with all three of the options, there would be an  
24 independent threshold that would trigger a cybersecurity audit of  
25 the business deriving 50 percent or more of their annual revenues  
26 from selling or sharing consumer's personal information, which is  
27 an existing threshold from CCPA. Option one, I'm sorry. Option one  
28 also considers a combination of the business's annual gross

1 revenues and its personal information processing activities. This  
2 aligns with the statutory direction to consider both the size and  
3 complexity of the business, as well as the nature and scope of its  
4 processing activities. And revenue can go to size and complexity.  
5 The number of consumers or households whose personal information is  
6 processed annually can go to the scope of the processing and then  
7 the type of personal information processed which is reflected in in  
8 B and C of sensitive personal information, and then the personal  
9 information of consumers that the business has actual knowledge  
10 were less than 16 years of age go to the nature of the processing  
11 as well and aligns with how other regulators have considered the  
12 volume and sensitivity of information and how businesses should be  
13 assessing and managing their cybersecurity risks. So, staff has a  
14 pressed run for option one because it considers all those elements  
15 together. There are many reasonable ways to think about the size of  
16 a business and the appropriate scoping, which is why this is an  
17 issue for Board discussion. We would love the Board's expert  
18 opinions on what the appropriate threshold should be. We do see a  
19 benefit in having the existing thresholds within our law. For  
20 example, the \$25 million annual revenue threshold, one million  
21 consumers or households' personal information. That number is a  
22 placeholder and certainly we're open to feedback on all of these.  
23 And then a hundred thousand number for B and C, there is a hundred  
24 thousand threshold of consumers or households, personal information  
25 in another part of the definition from business in the statute. So,  
26 that's also a placeholder as well. But given that there's a range  
27 of different options, we certainly wanted to hear from the Board  
28 about the value of those particular thresholds, and we're happy to

1 take your feedback.

2 **MS. DE LA TORRE:** So very much. I know and I understand that  
3 setting thresholds for our law in and of itself was, you know, a  
4 process. So, if we can maybe start taking comments from the rest of  
5 the Board.

6 **MS. URBAN:** Yeah, thank you Ms. de la Torre, and thank you, Ms.  
7 Anderson. This is helpful. I have two thoughts, which are not going  
8 to give you specific numbers for thresholds, but I hope that  
9 they're helpful. My first thought is that the lodestar has to be  
10 the risk, not how many employees you have or how big you are. I  
11 said this in July, but I don't see, you know, cybersecurity  
12 requires a network of protection, and the lodestar needs to be the  
13 risk. At the same time, of course, we have to balance that against  
14 what's practical and what's reasonable. And that's where we end up  
15 bringing in various thresholds and so forth. With regards to  
16 specific thresholds or options, I'm happy to take staff's  
17 recommendation on the option. I'm very hesitant to talk about  
18 specific thresholds because I do not think the Board has sufficient  
19 information to be spit balling like, what this should be. A million  
20 sounds high to me given the population of California, but I don't  
21 know. And my guess is, given how thoughtfully these are prepared,  
22 that staff and the subcommittee have looked very carefully through  
23 the preliminary comments to learn what they can, but this to me  
24 seems like a situation where you choose a method and put it out for  
25 public comment, and we're going to learn if it's wrong from the  
26 people who know, who are the people who have to live with it.

27 **MR. WORTHE:** In any sense, an option two, how many businesses  
28 you'd capture if you hit all three of those? Do you have any? Is

1 there a number out there that--

2 **MS. DE LA TORRE:** So, right, that's exactly the next step. We  
3 would like to have an idea of the threshold to be able to come back  
4 to the Board with an idea of how many businesses.

5 **MR. WORTHE:** Okay. We don't know that now of these numbers?

6 **MS. DE LA TORRE:** No, I mean, maybe staff, but there's no  
7 public accounting of how many records organizations process, and we  
8 don't have a threshold to the applicability of our law that's based  
9 exactly on these thresholds that we're setting here. But maybe  
10 staff. Is there a--

11 **MS. ANDERSON:** I'll address that by saying that on questions  
12 about costs or the number of businesses affected by different  
13 thresholds, that would be more of a question for our economists.  
14 And on questions like that, I'll defer to our general counsel,  
15 Philip Laird. He can provide the appropriate context regarding the  
16 role of the economist and the general timing of the economic  
17 analysis.

18 **MS. DE LA TORRE:** I think that would be ideal if Phil could  
19 give us an explanation on how it will be to work with an economist.  
20 Maybe we can get an idea for all of these thresholds in terms of  
21 how many businesses, but maybe that's too much. Before that, I know  
22 that Mr. Mactaggart had a comment, so maybe we can take that and--

23 **MR. MACTAGGART:** Sure. Well, I think, thanks. I think the  
24 interesting thing here is that it's kind of-- the definition is  
25 recursive because we're saying the business, but to be a business,  
26 you have to meet the definitions in 140. So, the only people who  
27 are covered are the people in 140. And so, I think, I guess my  
28 question to the subcommittee is, just stepping back a little bit,

1 is your concern that this is too onerous and you want to lessen the  
2 burden on the basic person, basic business that meets the test, but  
3 you have a business that's \$25 million and it processes 100,000,  
4 and you think you're throwing out there for suggestion that that's  
5 too onerous and it should be a-- they should not have to do a  
6 cybersecurity audit?

7 **MS. DE LA TORRE:** I think that's exactly right. At least on my  
8 side. So, you can think about businesses that have basically only  
9 met the threshold on sharing information because of the activities  
10 in which they engage, that might be not very large. And if they are  
11 not very large, and we are imposing on them an obligation that we  
12 really drafted to be a comprehensive cybersecurity audit, like an  
13 in-depth cybersecurity audit, now that check the box exercise, we  
14 have to think about what that means in terms of cost to that  
15 business, to those businesses, and also be aware that they are  
16 still required to keep the information secure. That's not going to  
17 go away. That's imposing a different section of our rules. What we  
18 are imposing is a formal obligation, you know, for small and medium  
19 organizations to seek advice because they might not have a general  
20 counsel. You know, they might have limited staff that could do  
21 this, so they will have to go to external parties that that's going  
22 to have a cost that you know, it may not enable them to hire  
23 somebody else. So, that's where we wanted to be thoughtful in terms  
24 of where we set the obligation.

25 **MR. LE:** Yeah, no, I'll just second that. You know, the idea is  
26 like, is this threshold good enough? What do you want to narrow?  
27 Right? Essentially the question is like, do you want to narrow the  
28 number of visits that have to do cybersecurity audits? You know, if

1 the Board feels that way, that's kind of why we put these other  
2 options here. But you know, I personally, you know, I don't know if  
3 I should say that I like the staff option, right? I don't know the  
4 exact numbers. But then again, I don't have a great idea of the  
5 economic scale.

6 **MR. MACTAGGART:** Okay, one more question, which I'm just kind  
7 of throwing out there. Did anybody ever think about having a moving  
8 target so that it's bigger now, but over time, it would cover more  
9 companies? So, there's a lead in, you know, because I guess one of  
10 the things when I'm looking at this, it's certainly a very robust  
11 cybersecurity audit. Clearly the first one will be the worst.  
12 Right? And then over the years, presumably you've got your  
13 processes in place, so you haven't changed it. So, there's a--

14 **MS. URBAN:** Startup cost?

15 **MR. MACTAGGART:** Yeah, there's startup cost, utility to giving  
16 people more time. But then I look at the thresholds, I'm like, we  
17 get \$25 million, which gets indexed for inflation. That's a pretty  
18 big number. A hundred thousand people, that's a pretty big number.  
19 And 50 percent of revenue from selling personal information, it's a  
20 pretty big number. So, I don't feel strongly about this. I look at  
21 those things. I think they're pretty good. But I also see that  
22 there is-- I totally buy into the whole, this could be a big cost  
23 for folks. But if you knew you had more time to comply, maybe say  
24 for--

25 **MS. URBAN:** Mr. Mactaggart, can you-- I've been asked--  
26 [crosstalk]

27 **MR. MACTAGGART:** I'm so sorry. I'm so sorry. If you knew you  
28 had more time to comply, maybe, you know, you could have the larger

1 companies had to comply sooner, but eventually, you trend down  
2 towards everybody who meets the definition of business under 140  
3 has to comply, but you've given them more lead in time for the  
4 smaller companies. Something-- I don't know. I just--

5 **MS. DE LA TORRE:** I have to say, I was thinking exactly on  
6 those terms, that if we start with our-- so I think the compromise  
7 for us was we didn't want to water down. And I don't know if that's  
8 a technical term, the audit on the idea of, you know, if it applies  
9 to everybody, maybe we should think about audit that has a lower  
10 cost. We wanted to really build this to be comprehensive and  
11 strong. And there's always an opportunity to set the thresholds at  
12 a higher level and then something might happen in the news where we  
13 identify, okay, we were worried about data brokers or, you know,  
14 organizations that meet our Civil Code section definition under  
15 1798.140, but now it's obvious to us that there's another segment  
16 of industry that is really not, you know, meeting our expectations.  
17 We could always come back to the rules without changing anything in  
18 terms of the robustness of the cybersecurity audit and certainly  
19 add them to the list of organizations that can be or should be  
20 required to do the cybersecurity audit. So, that's definitely  
21 something that was in my mind to set the thresholds and then  
22 revisit. And I--

23 **MR. MACTAGGART:** Yeah.

24 **MR. LE:** And I think it's helpful. You know, this is exactly  
25 what we wanted to hear from you all is like, do we think that these  
26 general outline first, maybe option one makes sense, we just wanted  
27 to put those other options there. If you all have feelings that  
28 this was too onerous, we want to increase it to \$50 million or

1 something like that but I'm not seeing that.

2 **MS. DE LA TORRE:** Another thing that I--

3 **MS. URBAN:** I want to restate what I thought Mr. Mactaggart was  
4 saying, which I could be wrong, but I wasn't hearing actually  
5 opening up a new rulemaking proceeding, which is a whole new  
6 rulemaking proceeding, but writing the rules such that they had  
7 sort of over time they applied to more companies. Is that what you  
8 were saying, Mr. Mactaggart?

9 **MR. MACTAGGART:** Yeah. I think if you're trying to-- if the  
10 concern about not using the definition within 140 currently is that  
11 it covers too many people, to Ms. de la Torre's point, if the  
12 concern is, well, it might be a relatively small company that  
13 doesn't have a general counsel, my sense is what's going to happen?  
14 Because remember, this is not California businesses. This is a  
15 business in, doesn't matter, Tel Aviv, Tokyo, you're doing business  
16 in California. So, my sense is that there will become people who  
17 are good at doing these audits for companies. And so, at some  
18 point, you will go to that third party and say, please come do an  
19 audit for me. Maybe that in industry doesn't exist quite yet, but  
20 it will. So, I could see it a lead in where you said maybe year one  
21 it's companies with a hundred million dollars in revenue, and year  
22 five it's companies with \$50 million a year and, you know, year 10  
23 it's companies with \$25 million, something like that to give people  
24 a sense of, okay, this is coming. It's a suggestion. I don't feel  
25 strongly.

26 **MS. DE LA TORRE:** Thank you for the clarification.

27 **MS. URBAN:** I just wanted to reassure within the conversation  
28 for staff's purposes, I'm not sure if we could swing that under the

1 APA but it seems like a useful suggestion.

2 **MS. DE LA TORRE:** Thank you for the clarification. The one  
3 comment that I will have, and I think I'm going to rely on our  
4 staff to give us an explanation, is how complex will be for our  
5 economists to right now estimate the cost of this today, plus in  
6 two years, you know, we change the threshold. I don't know how much  
7 more difficult will make the work of the auditor if we set that  
8 cascading.

9 **MR. LAIRD:** I won't pretend to be an economist, but I'll just  
10 say, I mean I agree. I think there'd be more guesswork ultimately  
11 in what is the cost in five years than when we're actually five  
12 years down the road if we decided to do new rulemaking. From my  
13 perspective, both options are viable though from a rulemaking  
14 standpoint.

15 **MR. MACTAGGART:** It's all guesswork anyway. It's economists.

16 **MS. DE LA TORRE:** So, if we could have Mr. Laird explain to us,  
17 you know, what's the process to clean that idea of the cost of  
18 these rules once we set the method for the threshold? Could we get  
19 like, the cost for each one of these, or will it be too much in  
20 terms of helping staff diminish their load?

21 **MR. LAIRD:** So, in terms of, I mean, I think certainly within  
22 the option one where there's sort of potentially swinging  
23 thresholds depending on how many consumers, how much personal  
24 information is being processed, that would obviously, if we choose  
25 a number for those now, that would be part of the economic impact  
26 assessment that the economists will do. Part of that process  
27 actually does include the consideration of alternatives. But  
28 knowing that it would, I think it would be a much bigger lift to

1 then sort of look at sort of options two and three versus comparing  
2 maybe different thresholds. So, you know, to the points I've heard  
3 today, whether it's a hundred thousand or a million, for instance,  
4 for some of these, that'll inherently, I think, be part of the  
5 analysis that's completed. And I think to the chair's point, if we  
6 want to sort of follow, I think the way the rulemaking process  
7 imagines this would carry out, I think what we would do is start  
8 with a position that we all thought was reasonable. Also, consider  
9 some alternatives as the economic impact analysis is prepared and  
10 would be made as part of the notice package originally. And then  
11 we'd have both the benefit of that information, that economic  
12 analysis and the public comment that would come in during the 45  
13 days to then inform, did we hit the thresholds at the right level,  
14 or should we pivot to something different? So, I hope that makes  
15 sense, in terms of--

16 **MS. DE LA TORRE:** I want to kind of get a little bit of your  
17 expertise here in terms of that moment in which we might change--  
18 So, let's say we both on moving these rules forward with a  
19 threshold that gives us this cost. If through the rulemaking  
20 process, we change that threshold to go down or to go up, are we  
21 then required to go back to the economist and get another  
22 calculation of the cost? Or are we good because we obtain initial  
23 cost based on the initial draft and then we don't need to obtain  
24 another calculation before we close the process?

25 **MR. LAIRD:** I'm going to give the lawyerly answer of "it  
26 depends," but I could explain. For instance, as I said, the  
27 economists will have to consider sort of alternatives to what we  
28 present. So, if we just go with one of those alternatives, there

1 would be an addendum essentially to their economic impact  
2 assessment that would explain, you know, the Board amended these  
3 regulations. This is now the threshold, this is now the, the  
4 economic impact. But the lift would be much lighter than say, a  
5 complete rewrite of the framework or a whole different threshold  
6 mechanism, which would probably require an updated economic  
7 assessment that, again, I'm not the economist here, but I think I  
8 could represent what they would say. And that is, that would be  
9 more work than if we kind of stayed within certain parameters of  
10 what's being proposed.

11 **MR. LE:** So, what I'm hearing is we can ask the economist to do  
12 \$25 million, \$50 million, you know, \$10 million, and then as long  
13 as we stick with one option, not all three options.

14 **MS. URBAN:** I just would like to-- I saw Mr. Worthe, and I know  
15 it's hard to--

16 **MR. WORTHE:** No, no, no. I think you have to assume as over  
17 time, that suggestion, as you grab more businesses, the cost is  
18 going to go down. Right? So, I think if you cannot up with 47  
19 alternatives, but come up with maybe fees, because it's just-- I  
20 have no idea the number of businesses and the cost at all. Right?  
21 So, just start there. But as you pull more people into it,  
22 logically, the price will come down because more people will just  
23 be getting in the business.

24 **MS. DE LA TORRE:** I think that's absolutely correct, and it's  
25 part of the catch-22. Is that the expression? We want to understand  
26 the cost. But to understand the cost, we have to give the economies  
27 the reference on how we're going to set the thresholds. And we are  
28 doing that without fully understanding what the cost will be. So,

1 that's why we thought that in terms of the cybersecurity rules,  
2 this was the major policy decision to have a conversation as a  
3 Board about.

4 **MS. URBAN:** So, I think that everyone was attracted to or  
5 supported option one, am I wrong about that?

6 **MS. DE LA TORRE:** I am actually more leaning towards two and  
7 three. And the reason is that I actually have counted records, and  
8 it's not easy for organizations to come to the conclusion of how  
9 many, you know, records of information of California residents they  
10 have. The one sensitive personal information, which I think that  
11 that's important, right? Like sensitive personal information is the  
12 information that we will expect his more secure, has the advantage  
13 of making that connection with sensitive personal information. But  
14 to me, you know, you could have, for one consumer, like a lot of  
15 sensitive information and that will count as a one, versus you  
16 could have for another consumer just an item that under our rules  
17 is sensitive information and that will count as one also. So, it's  
18 not giving me the kind of granularity in terms of the polling of  
19 information. I thought, you know, should it be like terabytes of  
20 information? But all of those options in terms of implementation  
21 are a little challenging for organizations. And I think that is  
22 small and medium businesses that do not have legal staff, do not  
23 have a general counsel, are not even going to know. I mean, they  
24 per se will have the cost of going out to somebody to tell them  
25 whether they are subject or not, because they cannot tell  
26 necessarily themselves, versus if we go for two or three, it will  
27 be pretty clear to them because they do know the number of  
28 employees that they have, they do know their annual gross revenue.

1 It will be very clear to them if they are subject to the rules or  
2 not. With the caveat that maybe like Mr. Mactaggart was mentioning,  
3 towards the future, and there's an opportunity to make these rules  
4 applicable to other organizations. At the beginning, I think that  
5 this option two and option three give us that clarity. They give  
6 clarity to the regulated community. And it also is easier to  
7 enforce in the sense that there's a record of the annual gross  
8 revenue of organization. There is a record of the number of  
9 employees, versus you go to an organization, you tell them you  
10 should have conducted a cybersecurity audit, and then we have to  
11 have a conversation on how many records you have to make that  
12 determination.

13 **MS. URBAN:** Mr. Mactaggart?

14 **MR. MACTAGGART:** If that's the case, I would support two, not  
15 three, just because I feel like the simpler we keep it, the better.  
16 Two, the concepts already in 140 in terms of gross revenues,  
17 employees is not. And one comment just to Mr. Le, I don't think you  
18 can actually say \$10 million. Like, I think it'd be very hard to go  
19 below the threshold of \$25, which is what the voters' approved, but  
20 you could certainly "be more lenient" for the first few years and  
21 say, okay, well we're going to have this lead in so it's a \$100  
22 million, you know, revenue for the first whatever. You know, you  
23 could do something like that, I think pretty easily. And it's  
24 bright line, and I think I agree with you, very clear what your  
25 revenues are, and it's very easy to calculate that.

26 **MS. URBAN:** My concern about that is that it isn't tied to  
27 risk. I mean, you have a business, it's a large business, it  
28 doesn't deal with personal information. I mean, that may be rare

1 these days, but why are we making them do this, I guess, is my  
2 question. Similarly, like, I'm not sure how this is tied to the  
3 number of employees. I don't have strong opinions about it. Again,  
4 because I don't think that we have full information. I am  
5 interested in, and I mean, I don't want us to get bogged down in  
6 this. I think it's a question I would ask staff in terms of the  
7 thresholds. Mr. Mactaggart, I mentioned the recursive threshold in  
8 July, and it's less recursive than it was now. But so, \$25 million  
9 gets you covered by the law. I'm not sure we can't say \$10 million  
10 if you're already covered by the law. Well, I guess you're already  
11 covered, but \$25 million is not the only threshold that gets you  
12 covered by the law. So maybe you're covered by one of the other  
13 thresholds, and your revenues are \$10 million. You would still be  
14 covered by the law, and we could still cover you with the  
15 cybersecurity audit if we would like to, but that-- I don't want to  
16 get into the weeds on that. I thought a lot about the recursive  
17 thresholds in July. So, you know, I still prefer option one, but I  
18 also really think that we are not going to know exactly what is the  
19 right decision here, and I'm hoping that we can, you know, release  
20 it for further exploration. Mr. Worthe, did you have a preferred--

21 **MR. WORTHE:** Yeah, I assumed actually we were going to take  
22 these options and analyze all of them at this stage, because it's  
23 so early, and maybe I'm--

24 **MS. DE LA TORRE:** I was going to offer an idea that I think can  
25 bring all of this conversation together, which is could we  
26 potentially get economic analysis that calculates, you know, based  
27 on the annual gross revenue and then if they have to compare  
28 options, could they compare it to one of the A, B, C or-- so, could

1 we get that cost basically for option two and for at least A, B or  
2 C of option one, and then come back to the Board with the idea of  
3 the cost. And that, I think will give us more information.

4 **MR. WORTHE:** Yeah. I think the cost though won't change, right?  
5 The cost for somebody who has a million more consumers and the cost  
6 for someone who has a hundred thousand more, I mean, the cost is  
7 going to be the same. It's going to be how many people are we  
8 pulling into these regulations with what. [crosstalk]

9 **MS. URBAN:** Yeah.

10 **MR. WORTHE:** So, I don't think that--

11 **MS. URBAN:** That's the cost of the regulation, I think.

12 **MR. WORTHE:** But I agree though. I mean, I think what your  
13 bigger conc-- my bigger concern would be somebody who's smaller  
14 that's doing a lot of data that doesn't have the infrastructure in  
15 place, it doesn't have the proper IT support. You probably want to  
16 know at least how many of those are out there. Because that might  
17 be your biggest risk.

18 **MS. URBAN:** Traditionally, it's been a pretty big risk.

19 **MR. WORTHE:** You know, if someone has-- making this number up  
20 because it's here, but someone's \$25 million in revenue, they're  
21 likely to have a good IT program in place.

22 **MS. DE LA TORRE:** Yeah. I don't have an answer to that. In my  
23 experience, smaller organizations rely on service providers for  
24 their IT systems.

25 **MR. WORTHE:** Right.

26 **MS. DE LA TORRE:** So, the security is either built into those  
27 service providers or is not available because they didn't choose  
28 the right service provider, and they most likely don't have the

1 ability to actually hire somebody to fix that other than switching  
2 service providers. But we are all a little bit, you know, trying to  
3 identify at a granular level and being responsible on how we set  
4 the threshold with limited information. I think that's the  
5 challenge of this conversation. So, maybe we can come back to the  
6 Board with a little bit more information. And also, I love the idea  
7 that Mr. Mactaggart shared before, which is this kind of all, I  
8 mean, we agree on basically the content of the audit. We will have  
9 future rulemaking opportunities to expand. And particularly, if we  
10 are thinking that the cost is going to be higher at the beginning  
11 as the industry to perform this audits is built, I will be very--  
12 my tendency will be then let's impose those costs on those who can  
13 bear the cost. We know they can bear the cost because they have the  
14 size to bear the cost. And then think about how we evolve from  
15 there. But Mr. Laird, will that be possible if we go to the  
16 economist and we ask the economist, could we get an idea of the  
17 cost based on gross revenue plus an idea of the cost based on, we  
18 said, a threshold for number of consumers? Or is that not viable?

19 **MR. SOLTANI:** Yeah.

20 **MS. URBAN:** I think-- yeah, sorry, Mr. Soltani, I knew you  
21 wanted to weigh in. Sorry.

22 **MR. SOLTANI:** Happy to. I've been working closely with  
23 essentially provisioning economists. So, we will soon have  
24 basically two sets of economists to help us as well as an in-house  
25 resource. Typically, just a three undertaking takes usually about a  
26 year, as you all know. We've tried to mitigate some of that cost or  
27 the time by doing things in parallel. So, we have two teams working  
28 on things like one side does the cost and the other side does the

1 benefit. We can certainly have them review some of these  
2 permutations. But as Mr. Laird said, typically this is done through  
3 the kind of alternatives considered process in the SRIA. So, we  
4 essentially do it through the rulemaking where we say you know, you  
5 all pick some numbers that seem appropriate and more importantly,  
6 pick the thresholds that you all think is-- but then you say, well,  
7 we also want to consider this this other factor. And that goes into  
8 the economic analysis. And to Mr. Worthe's point, typically, this  
9 is bounded, right? Because you're guessing. And in this case, it's  
10 the first year of implementation costs. So, we are guessing what  
11 the costs of this would be, say, when the rules are finalized. If  
12 that's in '24, you know, fall of '24, '25, so we're projecting in  
13 the future. So, we make some assumptions and bounded determinations  
14 of what's the lower cost and what's the upper cost. And that's kind  
15 of the range we get with some assumptions like, oh, as more  
16 companies undertake these, then the cost of the good goes down,  
17 right? So, we have those models and that will be all put into the  
18 economic analysis. My recommendation I defer to the Board is to do  
19 that as part of the rulemaking so that we can hear from both our  
20 economists as well as from the public when they say, actually, you  
21 know, here's our-- you know, we would love the public to tell us  
22 what they're paying for, for, you know both a contracted audit as  
23 well as in-house audit. And those will inform rulemaking at which  
24 point after the 45-day process, you all could then adjust the  
25 thresholds then.

26 **MS. DE LA TORRE:** Let me repeat back to make sure that I  
27 understood. We do need to set some form of threshold to send it to  
28 rulemaking. But what you're, I think, saying is that after we send

1 it to rulemaking, there's an opportunity to adjust that, right?  
2 Like, we couldn't send it to rulemaking without a method and a  
3 number. Is that correct?

4 **MR. SOLTANI:** No, I'm saying we pick a number for the  
5 rulemaking, and then we are also discussing some alternatives. And  
6 we should tease out what we mean by send it to the rulemaking.  
7 Essentially, when the Board feel like the regulations are close to  
8 finalized, at that snapshot, at that point in time, the economists  
9 do a regulatory impact assessment of the costs and benefits of  
10 those proposed regulations as well as the alternatives. So, when we  
11 are thinking about doing rulemaking, we then add, you know, often a  
12 year. We're going to try to shoot for four months to do essentially  
13 an economic analysis because we're already doing that analysis, or  
14 we've already begun that analysis. So, hopefully, we'll cut some  
15 time from that and we're building the models, we're working on  
16 building on the models. So, when you all are kind of settled, say  
17 it's today, on what these rough thresholds should be, and you pick  
18 numbers, we will build essentially an economic assessment as well  
19 as consider the alternatives that will then go into the SRIA, which  
20 will then go part of the rulemaking file. So, when the notice is  
21 filed, it will accompany it with it SRIA or you know, an economic  
22 assessment. I don't want to say it's automatically SRIA, and at  
23 that point the public and you all will have that information. The  
24 public will respond, public will provide additional information.  
25 And then based on the economic assessment as well as the public's  
26 input, you'll have an opportunity to revise those thresholds, add  
27 new thresholds, you know, et cetera. And to Mr. Phil's-- Mr.  
28 Laird's point, assuming you know, it's within that framework, you

1 then simply just do an addendum on your 399 addendum when we revise  
2 the rules of what the changes were, and we don't have to even redo  
3 a full economic analysis. Does that all make sense?

4 **MS. DE LA TORRE:** Thank you.

5 **MR. LAIRD:** I generally concur with everything my director just  
6 said. But yeah, I think if there is interest in trying to buckle  
7 down on any of these sort of initial threshold numbers up front, I  
8 guess we would just need to get some sort of range you were looking  
9 for, because to just-- I don't know if the economists can just do a  
10 zero to, you know, infinity analysis for annual gross revenues, for  
11 instance. So, we'd need some choice on terms of what alternatives.

12 **MS. URBAN:** So, my preference would be for staff based on the  
13 conversation that we're having to make an initial choice.

14 **MS. DE LA TORRE:** So, I think the subcommittee could do that,  
15 but I just wanted to summarize, I think that in terms of the bright  
16 line thresholds, which are option two and three, there was a  
17 preference stated that if we were to go that route, annual gross  
18 revenue is a better indicator than number of employees. I think  
19 that we have a consolidated opinion of the Board on that. So, maybe  
20 we can take out option three as the bright light option. In terms  
21 of the thresholds that are set on number of consumers, is there a  
22 preference for number of consumers versus sensitive information  
23 versus potentially information of minors? It seems to me that  
24 perhaps the process, personal information of a number of consumers  
25 that we set is more aligned with our statute, because that's one of  
26 the thresholds of our statute, but it relates to sell or share, so  
27 I just wanted to see if the Board had input in between the A, B and  
28 C, what would be--

1           **MS. URBAN:** I think, you know what I'm going to say which is  
2 I'm concerned about risk, and I think that sensitive personal  
3 information and the personal information of children present a high  
4 risk. Just as a background question, is it Colorado has a  
5 cybersecurity data requirement for sensitive personal information?

6           **MS. DE LA TORRE:** So, this is one of the reasons why we think  
7 the cost is going to be something that we have to consider. There  
8 is no-- and I'm looking at stuff in case I'm misstated, but there  
9 is no other state that has this cybersecurity audit obligation. So,  
10 Colorado doesn't require a cybersecurity audit. We're going to be  
11 the state that requires--

12           **MS. URBAN:** The risk assessment. Right. Okay. Yes. Yes. Okay.  
13 Well, a cost to the business, I guess, that provides information to  
14 the agency and the public about risk and requires the business to  
15 consider its own internal processes.

16           **MS. DE LA TORRE:** But to the point of the chair, I believe that  
17 Colorado defines children's data sensitive data. So, they will  
18 consider children data sensitive data, so exactly.

19           **MS. URBAN:** And they don't have a threshold around it. Right.  
20 It's just if it's sensitive.

21           **MS. DE LA TORRE:** A threshold for what? For--

22           **MS. URBAN:** For how much, how many people?

23           **MR. LE:** I don't know.

24           **MS. DE LA TORRE:** For applicability of the Colorado law? Is  
25 that--?

26           **MS. URBAN:** For the risk assessment.

27           **MS. DE LA TORRE:** For the risk assessment, don't have  
28 thresholds for us or for them. But they don't have this

1 cybersecurity audit requirement.

2 **MS. URBAN:** Well, I mean, I think we all agree this needs to be  
3 practicable, that it's going to be most expensive the first time  
4 around and that we recognize that as time goes on and the cost goes  
5 down, and presumably people comply with the law more generally and  
6 have more information about the information that they hold, that it  
7 might make sense to expand it.

8 **MS. DE LA TORRE:** I just want to make sure that we are moving  
9 fast because it's three o'clock. I apologize, but--

10 **MS. URBAN:** I'm trying to say my preference is still for option  
11 one. I have, you know, I just am not prepared to, because I don't  
12 have the information to make detailed choices about what the  
13 thresholds are, and I would like staff to suggest some thresholds  
14 or the subcommittee. I'm not going to stand against option two. I  
15 just don't think it's as-- I don't think it's as connected to the  
16 purpose of the law or the purpose of the cybersecurity audit.

17 **MS. DE LA TORRE:** Thank you so much. I want to go, Mr.  
18 Mactaggart.

19 **MR. MACTAGGART:** I mean just coming back to the keep it simple  
20 thing, one of the problems that I foresee with option one is you  
21 could be in a situation where an entity did not meet the definition  
22 of business under 140 and yet cross the B or C threshold. So,  
23 because B and C, whether it's SPI processing or minor processing,  
24 you could have an entity that suddenly fell into the trap, but they  
25 would say, but I'm not even regulated by the laws. You get into  
26 that recursive thing. That's why I'm just trying to keep it simple  
27 to say, you know, eventually maybe all businesses are covered by  
28 this, but you just have a lead in anyway.

1           **MS. URBAN:** I'm not sure that's an issue, because if you're not  
2 regulated by the law, then you're not regulated by the law, and  
3 this doesn't apply to you. Right. So, with option one, and it may  
4 just be that there's a lot of text there, but the triggers that you  
5 meet the \$25 million annual gross revenue threshold and A, B, or C,  
6 so you would necessarily be a business under the law to begin with.

7           **MR. MACTAGGART:** Right, but because in 1798.140, it's not just  
8 \$25 million, right?

9           **MS. DE LA TORRE:** Right.

10          **MR. MACTAGGART:** It's \$25 million--

11          **MS. DE LA TORRE:** No, but this subdivision (d)(1)(A), so it is  
12 as of January 25, so you have to meet \$25 plus one of A, B, or C.

13          **MR. MACTAGGART:** I see. Okay.

14          **MS. URBAN:** But regardless, you would have to meet one of the  
15 thresholds of the law overall before any of this applied to you.

16          **MR. MACTAGGART:** Okay.

17          **MS. DE LA TORRE:** Yes.

18          **MR. LE:** So, you know, I don't-- again, in the interest of  
19 time, it may be-- would it be helpful if we just direct staff to  
20 just use these numbers here, also consider alternatives at their  
21 own discretion of higher numbers, and also consider, as part of  
22 doing option one, you're essentially doing number two already. So,  
23 can we just-- is that enough?

24          **MS. URBAN:** I definitely support that.

25          **MR. LE:** Yeah.

26          **MR. LAIRD:** And I should just say the economists aren't here so  
27 we will commit to do it as quickly as we can. I'm signing them up  
28 for work without their consent.

1           **MS. DE LA TORRE:** So, Mr.-- [crosstalk]

2           **MR. WORTHE:** Just one question. I know there's only a number of  
3 definitions on page four. Is "sensitive personal information"  
4 defined somewhere?

5           **MS. URBAN:** In the statute.

6           **MR. WORTHE:** Okay. Thanks.

7           **MS. DE LA TORRE:** And I think this should-- do we have a cross-  
8 reference here? Okay, we should have.

9           **MS. URBAN:** That is a very long conversation.

10          **MS. DE LA TORRE:** Okay. It's a fairly--

11          **MR. WORTHE:** Not today.

12          **MS. DE LA TORRE:** It's a fairly broad definition for our  
13 [crosstalk].

14          **MR. WORTHE:** Okay. As long as it's defined, so you can't say I  
15 didn't know that.

16          **MS. DE LA TORRE:** Yes. Okay. So, let's-- thank you so much for  
17 the input on this one. I think like, it dedicated-- we dedicated a  
18 lot of time to it, but we believe this is the major policy decision  
19 for us to make right now. So, let's move on to timing requirements  
20 of the cyber security audits. This is just about, you know, how  
21 often they need to happen. It will be every 24 months. We are  
22 leaving flexibility for the organizations to-- okay, sorry. No, it  
23 should be yearly. We are leaving up to the organization to decide  
24 if that's January, February, or March. It might depend on their  
25 other processes, but it has to be yearly. In terms of thoroughness  
26 and independence of the cybersecurity audit, this provision talks  
27 about the fact that the auditor should be a person that's  
28 qualified, that's objective, that's independent, doesn't

1 participate in activities that might compromise that independence.  
2 If the business uses an internal auditor, this is (a) (12), the most  
3 relevant part here is the business Board of directors governing  
4 body or highest-ranking executive that does not direct  
5 responsibility for the business cybersecurity programs. So, conduct  
6 the auditor's performance evaluation that's trying to seal the  
7 auditor from pressure from the cybersecurity team to weigh in one  
8 direction or another. They should be provided with all relevant  
9 information, they should-- business should disclose all relevant  
10 facts. I think there's, in the next page, a reference to the cyber  
11 security audits are assess, document and summarize all of the  
12 components, identify any gaps and weaknesses, specifically address  
13 a status of any gaps, identify any corrections that should be  
14 taken. The cybersecurity audits include the information on the name  
15 of the auditor. The cybersecurity audits include a name signed by  
16 the auditor. There's-- (h) is a little repetitive with (a) (12), but  
17 we can fix that. I just realized when we were reading it. (i) is,  
18 again, you know, a requirement around having information on who  
19 conducted the cybersecurity audit. Let me pause here. Is there any  
20 comment from the Board on the piece on ensuring that the  
21 cybersecurity audit is thorough and is independent?

22 **MS. URBAN:** I don't think that's a requirement in the law,  
23 right?

24 **MR. LE:** So, our implementation.

25 **MS. URBAN:** Oh, your implementation of it. I don't have any  
26 comments.

27 **MS. DE LA TORRE:** Okay. So, let's move on to 7123, scope of the  
28 cybersecurity audit. So, in terms of the scope of the cybersecurity

1 audit, there's the cybersecurity audits that the appropriate to the  
2 business size and complexity and the nature and scope of its  
3 processing activities. We have a box with options for the Board  
4 here. And there's two options. I think, actually I've been in a lot  
5 of thinking about this, and we probably can merge both of them. But  
6 the one thing that is outside of how things have traditionally  
7 functioned in cybersecurity that I really wanted to bring to the  
8 Board awareness in terms of policy is historically, cybersecurity  
9 teams think about risks from the perspective of risks to the  
10 organization. And that is how cybersecurity personnel tend to be  
11 trained. That's how cybersecurity frameworks think about risks. It  
12 doesn't mean that it eliminates any consideration of risks to  
13 consumers, to individuals because they can bring those risks into  
14 their consideration from the perspective of, you know, if there's a  
15 risk to the consumer, that will revert in a risk to the  
16 organization. The policy change that we will institute, we go for  
17 any of these options is we're basically stating that the  
18 cybersecurity audits are considered not only the risk to the  
19 organization but also the risks to the individuals to whom the data  
20 relates. So, in option number one, we have a list of those risks  
21 which actually assist as well in the section that Mr. Le is going  
22 to talk about in a little bit, which is the section in data  
23 protection impact assessment is just examples of ways in which  
24 consumers can be impacted. So, (b) (1) is the traditional risk to  
25 access, destruction, user modification, but when you start thinking  
26 about two is impairing consumers control or three economic harm to  
27 consumers or physical harm, psychological harm, reputational harm.  
28 Those are things that traditionally cybersecurity teams are not

1 trained to consider. We believe that it is important to move past  
2 cybersecurity thinking only about risk to the organization. For  
3 some organizations, information that they manage is information of  
4 individuals who are not necessarily their consumers, or they might  
5 not have a relationship with. And so, we wanted to really make sure  
6 that we highlighted that for the Board and that we got feedback in  
7 support of our policy decision, which is to make sure that this  
8 cybersecurity audits considered the rest two individuals. Let me  
9 pause here before we go into the options and gather comments.

10 **MR. MACTAGGART:** You know, I'd like option two better for the  
11 following reason. I totally subscribe to the notion that, you know,  
12 harm comes in all these different forms into different people. The  
13 problem we always confronted is that what might be psychologically  
14 harming to you may not be to me. Right? Your sexual orientation  
15 may, you may not matter at all. You may be quite happy. And for me,  
16 it might be honestly a matter, you know, of life and death kind of  
17 thing. And so, all of those felt like second order effects to me.  
18 The first order effect is did your data get stolen? Was it safe or  
19 not? And what happens past that is kind of up to you. So, I just  
20 felt like focusing on the bright line of is the data safe? Did it  
21 get stolen? That's what we're trying to encourage. All these other  
22 things are, they're very true. They happen, but it felt like we  
23 were we reaching past the thing we're supposed to regulate. To ask  
24 people to frankly opine about what may or may not be the damage to  
25 Mr. Le versus to you versus to me. And that's a very hard thing for  
26 business to say. And I think what you'll end up getting is the  
27 perfunctory sort of, yes, it could be damaging. I mean, you'll just  
28 be, but you know, people will fill out a template. So, I'm a little

1 concerned about that. And I thought two was, or something along the  
2 lines of two is a better focus of like, stop the threat, stop the  
3 incident and tell us if it happened.

4 **MS. URBAN:** I have a question about option two. I was expecting  
5 other definitions than the ones that appeared underneath it. Do you  
6 have a sense of what would indicate that something ma materially  
7 affects or is reasonably likely to materially affect a consumer?

8 **MS. DE LA TORRE:** Maybe we can defer the staff on that. I just  
9 want to be mindful of the time and if we can get an indication of--

10 **MS. URBAN:** I'm not sure because I don't know what this means.

11 **MS. DE LA TORRE:** No, no, no. Let it stop. But meaning we will  
12 be happy to let the staff modify the definitions.

13 **MS. ANDERSON:** Go ahead. I think on the differences between  
14 options one and two. What we were thinking is that the benefits of  
15 option one are that they provide the kind of clarity that I think  
16 chair Urban was pointing out with respect to terms like materially  
17 affected or regionally likely to material effect and even risks  
18 from cybersecurity threats. But there's a level of clarity that is  
19 not provided in option two that we think because option one and  
20 option two are both directed toward helping entities better assess  
21 and protect consumer's personal information, that option one  
22 provides a little bit more clarity about what the kinds of negative  
23 impacts are that companies should be thinking about when they're  
24 assessing and mitigating the risks to consumer's personal  
25 information. So, I think there would be-- we would likely need to  
26 clarify some of the terms that are currently in option two, whereas  
27 if we went with option one, we think that those terms are clearer  
28 and provide a little bit more specificity and kind of guidance for

1 both businesses that are subject to these cybersecurity audit  
2 requirements and also for businesses who are just looking for  
3 guidance on the kind of risks that they should be thinking about  
4 and to Board member Mactaggart's point about the kind of simplicity  
5 of option two versus option one, we do think there's a benefit in  
6 having these kinds of considerations incorporated as kind of a  
7 security by design concept, so that businesses can be a little bit  
8 broader in their thinking and become sensitized to risks that they  
9 might not otherwise have expected, could result from a data  
10 security breach. So, rather than focusing more on the security of  
11 business information systems as the cybersecurity objective, it's  
12 really more around protecting consumers from the negative impacts  
13 of a data security breach.

14 **MS. DE LA TORRE:** Did that answer your question?

15 **MS. URBAN:** Thank you. I guess I will just offer two comments.  
16 One is that I think Mr. Mactaggart's points about where to put  
17 detail are, are well taken, and I wonder how this connects to the  
18 risk assessments. But secondly, whatever the method of providing a  
19 little more definition to any language and option two, I would just  
20 point out that, you know, in the materially and reasonably likely  
21 to materially seem like pretty high standards, and I could be wrong  
22 about that. But I wonder how high a threshold we want to have  
23 before it's something that we think would affect consumers in a way  
24 that we care about for purposes of the cybersecurity audit. And  
25 here I'm thinking of going back to Mr. Mactaggart's observation  
26 about the arguments over whether someone has access data or whether  
27 they've actually exfiltrated it and what you have to show, which is  
28 addressed to some degree in the two definitions that are there. But

1 I think I would certainly benefit from a little more guidance on  
2 the kinds of things that would be sufficient to meet this threshold  
3 or possibly the threshold itself.

4 **MS. DE LA TORRE:** Thank you.

5 **MR. MACTAGGART:** Just one last comment on this. You know, in  
6 option one, the first three are pretty, what I call, I guess plain  
7 vanilla. Maybe even four, physical harm. But you start to get into-  
8 - if I'm a business and I have to evaluate what Ms. de la Torre's  
9 feelings of violation associated with the unauthorized access are  
10 going to be, I don't know. So, it becomes, I think, I just think  
11 you're going to get garbage in, garbage out a little bit. I think  
12 that focusing on the bright line of, you know, stop the theft. So,  
13 it could be a combination of the two, but the further we got down  
14 into the definition of option one, the less comfortable I got  
15 because I thought the more conjecture of business is going to have  
16 to figure out what's the reputational harm? I may not care, again,  
17 if my sexual orientation is known and Ms. de la Torre may care a  
18 lot.

19 **MS. DE LA TORRE:** So, one of the things that we could do to  
20 merge these options is to Mrs. Urban's point on offering more  
21 variety on what is material, we could cross-reference material to  
22 the list of harms that we have in the data protection impact  
23 assessment, which is basically, you know, similar but even more  
24 granular to this one, and work with the staff on, you know, how do  
25 we make sure that material is not interpreted to be too high of a  
26 threshold and there's more concrete understanding, and also for  
27 Office of Administrative Law. Will that satisfy?

28 **MS. URBAN:** I was going to suggest something very, very similar

1 to that, looking at this document. The things in the list are  
2 maybe, to Mr. Mactaggart's point, some of the things in the list  
3 could serve as examples of what is materially likely to affect  
4 consumer.

5 **MS. DE LA TORRE:** Thank you. I'm going to kind of try to go  
6 along, so if we need more time for the second piece but stop me if  
7 I'm going too fast and you have a comment and I'm just going really  
8 fast.

9 **MS. URBAN:** Ms. de la Torre, microphone. And Mr. Mactaggart,  
10 I'm sorry.

11 **MR. MACTAGGART:** It's alright.

12 **MS. DE LA TORRE:** Okay. Apologies. So, for C--

13 **MS. URBAN:** We can hear each other.

14 **MS. DE LA TORRE:** We will come back with a different drafting  
15 for this section in the box that addresses the points that we  
16 raised here. So, beyond that, when we're talking about the scope,  
17 the cybersecurity audits or the risk, all of the components of the  
18 program include the names and titles of the people who are  
19 qualified and responsible for the cybersecurity program. We have to  
20 work through some of the details that we require. But the idea is  
21 to understand who was responsible for cybersecurity in that  
22 organization, identify the safeguards, talk about-- we talk about  
23 authentication, encryption, zero trust architecture, architecture,  
24 account management and access controls, inventory management,  
25 secure configuration of hardware, vulnerability scans, log  
26 management, network monitoring and defense, antivirus and anti-  
27 malware, segmentation of systems, control ports, services and  
28 protocols, awareness, education and training, coding best

1 practices, oversight of service providers, contractures and third  
2 parties, retention schedules, the responsibility for security  
3 incidents. So, all of those are typical components of security  
4 program. I just wanted to pause and see if there was any comment  
5 from the Board on 7123 in terms of the content of the rules.

6 **MR. MACTAGGART:** I just had one comment. In (a) (2), the  
7 businesses disallowed the use of commonly pass-- "commonly," I  
8 think, missing is "commonly used passwords." And then the question  
9 is--

10 **MS. DE LA TORRE:** Where was that?

11 **MR. MACTAGGART:** (a) (2), top of page 12.

12 **MS. DE LA TORRE:** Okay.

13 **MR. MACTAGGART:** I think it's supposed to be commonly used  
14 passwords. And then does every business have one or should it be  
15 the Agency's list? I mean, I don't. Are there-- what if the  
16 business doesn't have one?

17 **MS. DE LA TORRE:** A strong, unique, commonly used passwords? Is  
18 that what you're saying?

19 **MR. MACTAGGART:** Yeah. Not on the businesses disallowed list of  
20 commonly. I think it should be used passwords.

21 **MR. LE:** No commonly passwords. Yeah, yeah, yeah.

22 **MS. DE LA TORRE:** [crosstalk] Okay, got it.

23 **MR. MACTAGGART:** And then I'm just wondering, that implies the  
24 business has one, but they may not. So, you know, are they supposed  
25 to? Because if they're supposed to, we should say that. So, it was  
26 a key one.

27 **MS. DE LA TORRE:** One thing to mention here is all of these  
28 components are typical components of a security program. The

1 auditor has the ability to determine if one of these components is  
2 not relevant to a specific organization. You can think, for  
3 example, of an organization that's fully remote. For them,  
4 physical-- so it's more of the list of everything that's possible  
5 than my-- the auditor will have to explain why it doesn't apply to  
6 an organization. And it might be that, you know, in small  
7 organization, it's not something that's required.

8 **MS. URBAN:** I think Mr. Worthe had a comment.

9 **MR. WORTHE:** No.

10 **MS. URBAN:** No, you didn't. Okay, sorry.

11 **MS. DE LA TORRE:** Okay. So, we have just, I think one more  
12 provision, which is notice of compliance. And this is also a policy  
13 decision. Our rules do not say that the cybersecurity audits need  
14 to be filed with the agency, but staff recommended that at least  
15 organizations file some form of notice of compliance with the  
16 agency, identifying that for the organizations that meet the  
17 threshold, they have met the requirements. The subcommittee felt  
18 that that was, you know, helpful. So, any comments on that?

19 **MS. URBAN:** So, I think this is a really important learning  
20 mechanism. Our conversation today has been limited by what we know,  
21 and that's going to be the situation here at T-0 before we have  
22 these requirements. And the best way, I think for us to, if we need  
23 to refine the requirements over time, as Mr. Mactaggart and others  
24 have suggested, is for us to have good information about compliance  
25 or otherwise. So, I think this is an important sort of information  
26 gathering and transparency edition.

27 **MR. MACTAGGART:** Thank you. The only comment I had is on the  
28 top of page nine, where you talk about the same concept, you have

1 the notion that in (j)-- no, one before zero was that. There's  
2 eight-- Anyway, it's the highest ranking executive that is  
3 responsible has reviewed the cybersecurity audit and understands  
4 its findings. And that concept here is not including, it's just  
5 that they, I don't know, it's signed, but it doesn't say that they  
6 reviewed it and understand the findings. I just wondered if you  
7 wanted to introduce--

8 **MS. DE LA TORRE:** Awesome. That's very helpful. We'll make sure  
9 to introduce it. One thing that I want to say before we move on to  
10 the definition of impact assessments is that this is a draft. We  
11 are taking in the comments that are policy related. There might be  
12 edits beyond the comments that we are receiving because we identify  
13 things like the one Mr. Mactaggart has identified that improve on  
14 the drafting or is more clear language. That doesn't change the  
15 spirit of the law. We just wanted to make the Board aware that in  
16 the next version of these that they see, there could be those kinds  
17 of changes just to connect things better or make things more clear,  
18 that will not-- you know, there could be conforming changes,  
19 basically trying to improve on the drafting that we haven't  
20 discussed. And we'll take note on this and make sure to fix that.

21 **MS. URBAN:** Yeah, I think we all agree that's completely fine.

22 **MS. DE LA TORRE:** So, I think that with that we have all of the  
23 feedback that we need on cybersecurity that-- unless we have more  
24 comments.

25 **MR. LE:** Well, yeah. And I think, you know, a couple things  
26 came up. I would love to go to my section, so you know, we'd love  
27 this be done. I think there was asked about when do we release this  
28 for the full Board to give one-on-one consideration. I don't know

1 about you, Lydia, but perhaps we can try to commit to us meeting as  
2 a subcommittee, finalizing these inputs, and then before the next  
3 Board meeting releasing this for the rest of the Board, provide  
4 input and then staff could just present at the next Board meeting  
5 with everyone's input.

6 **MS. URBAN:** So, I think that works under Bagley-Keene because  
7 when Ms. de la Torre and I formed the regulations subcommittee, we  
8 had a similar one sort of trailing obligation after a Board  
9 meeting, but it was clear to the public that there was a date  
10 certain at which we were dissolving our regulations subcommittee,  
11 and the topics for rulemaking were going into the subject matter  
12 subcommittees. Could that work here as well? Mr. Laird?

13 **MR. LAIRD:** I maybe didn't quite follow the--

14 **MR. LE:** So, we would meet with you, talk about all the input  
15 we got here today, kind of talk about, you know, as a subcommittee,  
16 you know, where we think it should go. And then at some point, we  
17 get the draft back, and then we release it to the full Board for  
18 their individual input before--

19 **MS. URBAN:** The next May.

20 **MR. LE:** The next Board meeting.

21 **MS. URBAN:** I would greatly value that because I need some--  
22 yeah. I actually need some time beyond a Board meeting.

23 **MS. DE LA TORRE:** So, we will generate a final subcommittee  
24 version of this draft, release it to the agency, and then the  
25 agency can work with Mr. Mactaggart on the definition that he  
26 mentioned, Ms. Urban on, you know, allowing her to obtain whatever  
27 additional information is needed. And in the next Board meeting--

28 **MR. MACTAGGART:** You'll present that full.

1           **MS. DE LA TORRE:** Yeah, you'll present it as a final.

2           **MR. MACTAGGART:** Yeah. I don't know the timing is possible.

3 It'll be us having to finish our subcommittee--

4           **MS. URBAN:** And I think then the procedural question is, could  
5 we have a switch over in between Board meetings and have that be a  
6 clear enough demarcation so that everybody's-- I mean, obviously we  
7 wouldn't be talking to each other beyond that date. But I think  
8 when we did this with the regulation subcommittee, we just picked a  
9 date.

10           **MR. LAIRD:** So, I think functionally, we can do this. But a few  
11 things I think we would need from the staff level is, well, so, I  
12 guess for us to be able to do that appropriately, staff would  
13 ultimately take all that input, but then be the ones responsible.

14           **MS. URBAN:** Correct.

15           **MR. LAIRD:** Putting out what we think is the most appropriate  
16 text--

17           **MS. URBAN:** Correct. And the question I think that Mr. Le and I  
18 have is if we could orchestrate this so that the subcommittee were  
19 able to have a subcommittee conversation with staff after this  
20 Board meeting, prior to the next Board meeting staff, it would be  
21 released to the Agency.

22           **MS. DE LA TORRE:** I think that we could do it in the next Board  
23 meeting. I mean, it's December. Our staff is really busy with other  
24 rules. If it's easier to just do that transition in the December  
25 meeting, we could--

26           **MR. LE:** Yeah. I mean, I would prefer to do it, I mean, I get  
27 what you're saying. I don't know if you have the resources and us  
28 having the time to get together with that final job, but, if

1 possible, I would prefer--

2 **MR. LAIRD:** I think we can do it. The only caveat is if we were  
3 to get significant suggestions or edits from any one Board member  
4 that, and at a date too close to the upcoming Board meeting, staff  
5 would be in a position where we probably could not turn that out.  
6 So--

7 **MS. DE LA TORRE:** So, we could try to accomplish that goal of,  
8 you know, transitioning to the staff before the next meeting, but  
9 with the flexibility of depending on the availability of us, and we  
10 are still working on one more package and we probably have work to  
11 do on the--

12 **MS. URBAN:** Yeah, that's okay. That would apply to this sub-  
13 package. That's what I think would be--

14 **MR. LE:** I think we can make a commitment to trying to do that  
15 by releasing it by the next Board meeting.

16 **MS. URBAN:** Okay. Wonderful. Thank you very much.

17 **MR. LE:** Okay.

18 **MR. SOLTANI:** Thank you, guys. And before we go, Board, just  
19 want to check that staff have what you all need, particularly  
20 around the thresholds. So that, for me, the thing in my mind is  
21 that I need to get the economists like going. And so, do we have  
22 everything we need in terms of like, we're moving forward on  
23 thresholds for this work?

24 **MS. ANDERSON:** I mean, I think we'll-- we'll meet with the  
25 subcommittee to discuss exactly what the go-forward plan is before  
26 we receive feedback directly from the Board, but it sounded to me  
27 like we were ready to provide some information to the economists to  
28 get an initial read, at least on the first thresholds question.

1           **MR. SOLTANI:** Got it. So, we'll take as-- assume this unless  
2 there's a major kind of revision during the next subcommittee  
3 meeting on these kind of on option one interpretations of like  
4 these options for the thresholds. Is that right?

5           **MS. ANDERSON:** That sounds right to me, but I want to check  
6 with the Board to make sure that they're all--

7           **MR. SOLTANI:** Basically, this is the thing on my mind is, like  
8 I said, normally takes a year so I'm trying to--

9           **MS. URBAN:** Thank you.

10          **MR. SOLTANI:** Great. And then one other just-- I know I don't  
11 want to put time pressure, but we have this room 'til 5:00.

12          **MR. LE:** Okay.

13          **MS. URBAN:** We have Mr. Worthe until 4:00.

14          **MR. LE:** I'll get right into it. Yeah, so, we're turning to the  
15 draft assessment regulations for the risk assessments. So, on page  
16 2, you know, the statutory provisions, so this is following up to  
17 the July 14 Board meeting where we presented, you know, the initial  
18 thresholds. Want to thank the staff who put together these  
19 regulations and the more complete requirements. I thank the public  
20 for, you know, all the comments that they provided and, you know,  
21 input from the Board. So, the goal for, you know, all of these  
22 regulations-- the goal today, I think, is to get Board input, as  
23 Lydia mentioned, so we can get that final text ready. But, you  
24 know, the goal substantively for these regulations, you know, is to  
25 protect consumers from harm, you know, by ensuring businesses  
26 properly consider the risks of their data-processing activities  
27 relative to the benefits and ensuring proper controls are in place  
28 to mitigate those potential harms. You know, that's the guiding

1 principle behind all of this, and it codifies-- these regulations  
2 codify what I believe, you know, businesses should be doing or are  
3 already doing anyways. And, you know, these harms, they're talked  
4 about later in these regulations, but, you know, they're data  
5 breaches, invasive profiling, unfair and accurate or discriminatory  
6 decisions, the erosions on personal autonomy and individual rights,  
7 you know, all privacy harms that can arise from the improper,  
8 irresponsible use of our data. So, you know, with that said, I will  
9 get into these regulations. But turning to page 3, we have  
10 definitions. You know, the definition of artificial intelligence is  
11 essentially adapted from the NIST standards and OECD definitions of  
12 artificial intelligence. Automated decision-making technology, you  
13 know, this is substantially similar to definitions that we've seen  
14 in, you know, the Civil Rights Division in California and the  
15 Algorithmic Accountability Act. You know, it's a little bit  
16 narrower than others, like Canada's algorithmic impact assessment  
17 language. But, you know, these are the definitions that we've come  
18 up with and--

19 **MR. MACTAGGART:** Mr. Le, can I--

20 **MR. LE:** Yeah, please.

21 **MR. MACTAGGART:** --ask about the definition? When I looked at  
22 the definition, one of my problems is I think it covers like a  
23 carburetor--

24 **MR. LE:** Yeah, well--

25 **MR. MACTAGGART:** --or a thermostat. Sorry. If I'm interrupting  
26 you, sorry.

27 **MR. LE:** Yeah, I mean, I was going to get into that, but, you  
28 know, you just finish your comment, and I can talk about it.

1           **MR. MACTAGGART:** Well, the ones I've seen have some kind of  
2 component about relating to what normally is like a human  
3 [inaudible] because the problem with this is "designed to operate  
4 with varying-- various-- varying levels of autonomy and can  
5 generate outputs that influence physical or virtual environments."  
6 That's pretty much any machine.

7           **MR. LE:** Yes, yeah. I mean, I'm willing to respond to that  
8 right now. You know, essentially, yes, the automated decision-  
9 making technology definition is quite broad, but then it is limited  
10 in terms of the later obligations of what actual systems that are  
11 captured by that. Actually, you know, only systems-- carburetors  
12 aren't making decisions that impact your ability to access  
13 financial opportunities. You know, calculators aren't doing that  
14 either. So, we have other limitations further on that constrain the  
15 breadth of this definition. And if you look at-- we've looked at  
16 all the definitions, staff has looked at it, we've looked at it.  
17 I've been working on this for years. You know, pretty much all the  
18 definitions that you'll see in print, including the EU, have a  
19 quite broad definition with restrictions later on the applicability  
20 of that definition.

21           **MR. MACTAGGART:** Thank you, yeah.

22           **MR. LE:** But yeah, any other comments on definitions?

23           **MS. DE LA TORRE:** I just want to chime on that. We made the  
24 determination of making the definitions broad with the  
25 understanding that we will have a conversation on what that does  
26 trigger when we talk about the-- when is the risk assessment  
27 necessary or we bring the next set of rules. So, maybe that's where  
28 we need to--

1           **MR. LE:** We'll go there soon. Yeah, yeah. So, that'll be on the  
2 next page but real quick: 7050, 7051, you know, these are  
3 essentially just talking about the obligations for service  
4 providers and contractors in participating in this risk assessment.  
5 But yes, the big policy question, you know, is in 7150. When a  
6 business shall conduct a risk assessment and, you know, it's when  
7 you have a significant risk to consumers' privacy, and we talk  
8 about what those significant risks are, you know, selling or  
9 sharing personal information. That's similar to what Colorado has.  
10 Processing sensitive personal information, again, similar to  
11 Colorado, GDPR, so those are pretty standard automated decision-  
12 making technology that is in furtherance of certain types of  
13 decisions that, you know, we find are significant. So, that's also  
14 in GDPR, Colorado. So those are relatively same with 4 and 5, you  
15 know, personal information of consumers that are under 16. Well, 4.  
16 So, the first four, I'll note, are very common in risk assessment  
17 thresholds, both in Europe and in, you know, states like Colorado.  
18 Number 5, you know, is about processing employee information. So,  
19 you know, that is something that we felt was important and added  
20 and, you know, love your comments on that. We brought it up at the  
21 last Board meeting, but now that you can see the requirements, you  
22 know, we'll take comment on that in a second. And then processing a  
23 personal information of consumers in publicly accessible places.  
24 Again, that's in the GDPR, that's considered a high-risk activity.  
25 Most companies that are operating in, you know, multiple  
26 jurisdictions should already be doing impact assessments for this  
27 type of data processing. And then on the last threshold, it is  
28 processing personal information of consumers to train AI or ADMT.

1 So, you know, these are thresholds. This one's new considering, you  
2 know, the risks of artificial intelligence that we've been seeing  
3 lately. But yeah, for the most part, these thresholds and triggers  
4 are in other jurisdictions with some California-specific additions.  
5 But yeah, happy to take comments on these thresholds from the Board  
6 and if you have anything to add, Lydia.

7 **MS. DE LA TORRE:** Just before we take this comment, so just  
8 highlight a couple of things. Processing of sensitive information,  
9 it's also one threshold for risk assessment in Colorado. I just  
10 wanted to highlight that because we regulate employee data, our  
11 concept of processing sensitive personal information triggering  
12 data protection [inaudible] is broader in that HR data will trigger  
13 data protection impact assessments. We carve in or carve out with  
14 the language or try to carve out with the language that follows the  
15 kind of sensitive information that HR teams process routinely  
16 because they will process for payment, you know, financial  
17 information. As for reporting I'm not sure if that language is  
18 tight enough. We can have a conversation about that at the Board.  
19 But the policy that we-- feedback that we received last time is  
20 it's okay to trigger data protection impact assessments for  
21 sensitive information of personnel getting outside of that  
22 obligation, the regular functions of HR. And again, we can talk  
23 about the language. I actually, you know, have questions also in  
24 the language. And using automated decision technology in partners  
25 of decisions that result in the provision or denial of financial  
26 services, et cetera. This is the idea of tightening that really  
27 broad definition of automating decision-making technology and  
28 making it narrower. I wanted to point out that Colorado does not

1 require data protection. I'm going to look at staff, but they don't  
2 require a data protection impact assessment for the use of  
3 automated decision technology in this context. They do require a  
4 number of-- there's a number of obligations that are trigger in the  
5 ADMT section of the rules. We will have an ADMT section of our  
6 rules, hopefully released in the next Board meeting. So, I think  
7 that a little bit, this has to be considered in connection with  
8 what will come next, and maybe there's a little bit of a decision  
9 on where the obligations should go and know how to make those  
10 things compatible, but this is different in that in other states  
11 use of automated decision technology doesn't proceed trigger data.

12 **MR. LE:** And just to add to that, you know, in Colorado, they  
13 essentially do the same thing. They just talk about it in terms of  
14 profiling.

15 **MS. DE LA TORRE:** Right, tight. And processing of personal  
16 information of consumers that the business has actual knowledge  
17 that less than 16 years of age, again, I'm making a reference to  
18 Colorado. Colorado defines sensitive information to--

19 **MS. URBAN:** Ms. de la Torre, can you speak into the microphone  
20 please?

21 **MS. DE LA TORRE:** Sure. Colorado defines sensitive personal  
22 information to include data of minors. So, their obligation to  
23 perform data protection packages for sensitive personal information  
24 will trigger that obligation for data of minors. We do have in  
25 California the Age-Appropriate Design Code. So, there's a little  
26 bit of an overlap between this obligation to perform a risk  
27 assessment and the obligation to do a risk assessment under the  
28 Age-Appropriate Design Code. And I think that those were just the

1 additional information that I wanted to share with the Board so we  
2 could make a determination that if the Age-Appropriate Design Code  
3 covers minors sufficiently maybe there's no need to have that  
4 obligation here.

5 **MR. LE:** Yeah. Just any thoughts on those thresholds? And we  
6 can revisit this after talking about the risk assessment  
7 requirements we'd like.

8 **MS. URBAN:** That would make sense to me.

9 **MR. LE:** Okay.

10 **MS. URBAN:** But I think Mr. Mactaggart is waving.

11 **MR. MACTAGGART:** Thanks. I'd request that you consider under 3  
12 not limiting ADM to decision that results in the provision or  
13 denial, but maybe access-- include access to or the provision or  
14 denial. Because you can imagine a world where I don't even see the  
15 opportunity. You know, because I don't get the ads, or I don't-- I  
16 get eliminated. So, I think that's one I'd like to suggest. And  
17 then in 5, I think-- I thought the wording was a little bit weird.  
18 I think it should be by or, you know, in using technology or by  
19 using technology because right now it's this sort of-- it's  
20 students using technology. It looks a little odd, that one there.  
21 And then I was just wondering in number 6, does-- going back to  
22 the, you know, with discussion we had earlier, does defining the  
23 public accessible places help? Because, for example, I looked down  
24 here and I didn't really see publicly operated transit, and I just  
25 kind of wondered, are we always going to, you know, are we have an  
26 exhaustive list, or we just say publicly accessible and that's  
27 publicly accessible. I mean, it just, you know, so I don't know,  
28 that would be my--

1           **MR. LE:** I will defer to staff on that. I think the other two  
2 are just, you know, word edits, but yeah.

3           **MS. NEELOFER SHAIKH:** Oh, absolutely. On the definition of  
4 publicly accessible, so the first sentence would be what would be  
5 included. And then the second sentence are just examples to help  
6 give, again, additional guidance to businesses. And so, to your  
7 point about publicly accessible transit, that's something that we  
8 can consider adding into the examples if that would be helpful.

9           **MR. MACTAGGART:** This is more drafting. I just thought less was  
10 more. You didn't need to define any of them. Just say "publicly  
11 accessible" then it's as broad as it can possibly be.

12           **MS. DE LA TORRE:** I think that there's a little bit of also  
13 consideration around our clarity requirements for the Office of  
14 Administrative Law that staff has to take into consideration.

15           **MR. MACTAGGART:** Alright. That makes sense.

16           **MS. DE LA TORRE:** I'm not sure if we can not define it.

17           **MR. LAIRD:** Yeah, I'd agree. I think this term needs to be--  
18 [crosstalk], this is one that strikes me as one OAL and--

19           **MS. DE LA TORRE:** So, we could maybe provide better examples  
20 potentially but--

21           **MR. LE:** Yeah, okay. Any other comments? Okay. Just moving  
22 forward and C, just a bunch of different examples. I think those  
23 are very helpful for businesses. You know, 7151 on page 6 talks  
24 about stakeholder involvement. You know, it's ensuring risk  
25 assessments get inputs from across a business, you know, helps  
26 ensure that all the risks are captured. And then now in 7152, you  
27 know, this is kind of the meat of what is required in a risk  
28 assessment. In my opinion, this is relatively standard. You know,

1 there's Colorado, GDPR analogues and, you know, we're asking for,  
2 describe what it is, what are you, what kind of data you're going  
3 to be using, the context of that processing and reasonable  
4 expectations around, you know, how your data is being used. This  
5 ties well into 7002, 7011 of our existing regulations, which talk  
6 about privacy policies and disclosing about, you know, categories  
7 of data. So, that seems to me pretty straightforward.

8 **MS. DE LA TORRE:** We need to pause on 7, benefits resulting  
9 from the processing [inaudible] the business. And this is really  
10 kind of a drafting choice. So, and there's pros and cons on both. I  
11 tend to think that less is more. So, we could talk about, in this  
12 situation, the benefits resulting from the processing as the  
13 business have identified these benefits and describe them with a  
14 specificity. The alternative formulation that we have is much more  
15 granular. The business identified these benefits and describe the  
16 extent of the benefit [inaudible]-- it says magnitude, but extent  
17 might be better-- magnitude of the beneficial impacts and the  
18 likelihood of the beneficial impacts occurring. The business  
19 [inaudible] with the specificity how it determined the magnitude  
20 and likelihood of the beneficial impacts, including the criteria  
21 the business used to make these determinations. So, you can see how  
22 one alternative is more prescriptive than the other one. And just  
23 wanted to get the Board's feedback in terms of should we lean  
24 towards making the rules shorter and maybe less granular, or is  
25 there a preference for being as granular as in here will be the  
26 alternative formulation? And this is page 8, section 7.

27 **MR. LE:** Yeah. And I'll note, I would love to see, you know,  
28 how businesses talk about, you know, how showing ads is this

1 benefit that, you know, for consumers or targeted advertising as  
2 benefit consumers. It's just to see, you know, the thought process  
3 behind that. I know that's come up a lot but, you know, we can keep  
4 it simple or be more prescriptive.

5 **MR. MACTAGGART:** One suggestion I had in that paragraph was  
6 whether because you always hear to improve our services. And one  
7 thing was just a bright line is the business benefiting financially  
8 from selling or sharing? Yeah. Just, you know-- just so you could--  
9 I could not have them hide behind the obfuscating language that  
10 they typically use.

11 **MR. LE:** Exactly what I was getting at, yeah.

12 **MS. DE LA TORRE:** So, the benefits to be described are the  
13 benefits to the business, which, you know, profiting could be one,  
14 but it's also benefits to the consumer, to the stakeholders, and to  
15 the public.

16 **MR. MACTAGGART:** Sure. But I was just talking about this, the  
17 one-- and I wouldn't just say making money. I would say, "Do you  
18 benefit?" We have to actually say if you're benefiting financially  
19 from selling or sharing information.

20 **MS. DE LA TORRE:** Okay. So, I think that then what I'm  
21 understanding is that you might agree with a more-- less granular  
22 description with the caveat that they should be specific as to  
23 whether they economically benefit. Is that--

24 **MR. MACTAGGART:** I don't know. It's just-- it's one of my pet  
25 peeves is you always read those privacy policies, and they always  
26 are a hole that you could drive a truck through in terms of what  
27 the benefit to the business is. And it never actually tells you  
28 whether they're making money from selling your personal

1 information, but the implication always, to me anyway, is that they  
2 are.

3 **MS. DE LA TORRE:** Okay, thank you.

4 **MR. LE:** Chair Urban?

5 **MS. URBAN:** I think Mr. Mactaggart's example is very well taken  
6 as, between these two, I think it's a low-stakes decision because I  
7 think that this is another situation where we should put it to  
8 public comment, and we should hear what this would mean for the  
9 people who would be doing the risk assessments. But Mr.  
10 Mactaggart's specificity is well taken because we've all seen that.

11 **MR. LE:** Well, yes, I don't think we have a clear steer, but  
12 maybe putting this up for public comment and, you know, these two  
13 aren't very far apart. Is that enough information?

14 **MS. URBAN:** I think I was intending to say I align myself with  
15 Mr. Mactaggart's sort of structural comment related to weasel  
16 language, which I'm not saying that that's a quote from Mr.  
17 Mactaggart. But I would be very happy for staff to choose, and then  
18 we'll hear from the public sort of what that would mean.

19 **MR. LE:** So, I think the direction for staff here is to create  
20 language that allow-- make sure-- ensures that businesses describe  
21 any financial benefits that they get with specificity in addition  
22 to other benefits.

23 **MS. DE LA TORRE:** I think that we have to recognize that we  
24 might not get to the end of this section--

25 **MR. LE:** --by 4--

26 **MS. DE LA TORRE:** --not because of--

27 **MR. LE:** --yeah--

28 **MS. DE LA TORRE:** --Mr. Le's skills but probably because of my

1 lack of skills and think about what that means in terms of the  
2 meeting. Maybe we have to bring this back in the next meeting. I  
3 know that we have to open for comments, and I don't know how long  
4 that's going to take. We have--

5 **MR. LE:** I think, well--

6 **MR. MACTAGGART:** Could I just suggest Mr. Worthe could just  
7 give us his comments before he has to leave?

8 **MS. URBAN:** Yes.

9 **MR. MACTAGGART:** And we could all continue. I'm sure he  
10 wouldn't take it too much amiss.

11 **MR. WORTHE:** Yeah, as long as I can jump ahead when we get  
12 there.

13 **MS. DE LA TORRE:** Yeah. We definitely expect this to come back  
14 in the next Board meeting, the data protection impact assessment.

15 **MS. URBAN:** I think, Mr. Worthe, if you have any comments on  
16 topics we haven't gotten to yet, you should feel free to offer them  
17 so that you're able to offer them before you need to go.

18 **MR. WORTHE:** You want me to do it now?

19 **MS. URBAN:** I think so. If Mr. Le can--

20 **MR. LE:** Do you need a minute?

21 **MR. WORTHE:** No, I've got notes, but to be honest with you, a  
22 lot of it gets answered once you sit through--

23 **MS. URBAN:** --the discussion--

24 **MR. WORTHE:** --hours of this. Yeah. So, but one question I had  
25 on page 9, and I couldn't come up with an example. On page nine,  
26 what if a requirement of the job, a job, I was thinking maybe  
27 somebody who's like a trader you know, currency trader, they might  
28 be videotaped as part of the requirement for that job. And when I

1 read this--

2 **MR. LE:** Nine. Page nine, which--

3 **MR. WORTHE:** Yeah. I'm sorry. Yeah.

4 **MR. LE:** Okay.

5 **MR. WORTHE:** So, just, when you get to it, think about is there  
6 profession which that's actually a requirement that needs to--

7 **MR. LE:** No, I mean, the thing with the risk assessment is  
8 we're not prohibiting any of these activities. Unless the risk, you  
9 know, isn't outweighed by the benefit. So, if this is required,  
10 right? You just got to explain, you know, that calculus from you as  
11 a business on why do you think that processing is justified  
12 relative. If you can't come up with that definition, you know, that  
13 explanation--

14 **MR. WORTHE:** That's fair.

15 **MR. LE:** Yeah.

16 **MS. DE LA TORRE:** I also wanted to provide a response that we  
17 made the comment with cybersecurity that typically there is no very  
18 general definition of risk for cybersecurity. For data protection  
19 impact assessment, it tends to be the contrary because they are  
20 addressing not your overall program, but this particular situation  
21 where you're doing in this particular context of processing. So,  
22 having a granular understanding of the risks, it helps you identify  
23 the controls that correlate to those risks. So, having a long list,  
24 specific list of potential harms can be beneficial with the  
25 understanding that not all of the data protection impact  
26 assessments are going to call for all of the risks, but it just  
27 gives you a reference of what risks to think about.

28 **MR. WORTHE:** Sure. That's fair. Page 13.

1           **MR. MACTAGGART:** Before you move on, can I just say I agree  
2 with Mr. Worth's point. I had highlighted as well, and I thought  
3 just the language about exploiting, I mean, for example, you can  
4 see UPS driver probably, they may have to monitor those things and  
5 as a public safety issue. So, I just thought the language was  
6 pretty negative and exploitation. Because sometimes it's something  
7 we all have an interest in knowing if the UPS driver has blown  
8 through [crosstalk] including the UPS driver, you know.

9           **MR. LE:** Okay. So, we can take back at the staff to revise the  
10 example. But again, you know, if you're recording your workers,  
11 what are the benefits of that, right? Compared to the risks. You  
12 know, and if you as a business say, you know, the benefits from  
13 preventing theft and whatever public safety, you can still do that  
14 processing.

15           **MS. URBAN:** Did you have further comments, Mr. Worthe?

16           **MR. WORTHE:** Yeah, the only other thing on page 13, we use this  
17 term six times "a plain language explanation." Is that like a term  
18 of art that--

19           **MR. LE:** Yeah.

20           **MR. WORTHE:** Okay. As long as it is. I'm not familiar with it,  
21 so I just want to make sure it doesn't give people too much wiggle  
22 room.

23           **MR. LE:** Yeah. And the intent here is just to, you know, not  
24 allow businesses to, or, you know, lawyers to use legalese and, you  
25 know, a lot of technical terms, like, can you explain it in a way  
26 that we'll all understand it. So, that's the general idea there.

27           **MR. WORTHE:** Okay.

28           **MS. DE LA TORRE:** I think that this is a reference that exists

1 in our rules in multiple places, plain language explanation. So,  
2 it's kind of consistent with other sets of rules that are already  
3 enacted.

4 **MR. WORTHE:** Okay.

5 **MR. LE:** Well then, is that it?

6 **MR. WORTHE:** That's all I had.

7 **MR. LE:** All right. I'll return to page nine. Yeah, so these,  
8 you know, I think we already talked about these. These are all the  
9 types of harms that we want businesses to consider as they're doing  
10 their risk assessments.

11 **MS. DE LA TORRE:** I want to pause for a second just to check  
12 because we will have comments after, and I heard that we have the  
13 room until 5. At what time should we pause the Board conversation  
14 to make sure that we can intake all of the comments that might come  
15 in before 5?

16 **MR. LAIRD:** Well, we can take comments at any point actually  
17 during the discussion so--

18 **MS. DE LA TORRE:** Maybe take the comments early to make sure  
19 that we leave enough room and then continue the discussion if  
20 that's possible?

21 **MR. LAIRD:** Yeah, and I'm not aware of how many people are in  
22 the room. Okay. I mean, my guess is as good as yours of how long  
23 the comments will be so we may want to leave some extra cushion,  
24 but if--

25 **MR. LE:** I think--

26 **MS. URBAN:** We also have two more agenda items.

27 **MR. LAIRD:** But if Mr. Le wants to try to--

28 **MR. LE:** I think we can get through this. You know, I'm pretty-

1 - this is going well.

2 **MS. URBAN:** Sorry?

3 **MR. LE:** Okay. Let's charge ahead. So, you know, after you  
4 identify the risks, let's talk about the safeguards. So that's page  
5 10, number nine. So, we're requiring business to explain, you know,  
6 we've identified these risks. How are we controlling and mitigating  
7 these risks? Again, fight standard or risk assessments in general.  
8 And then number 10 is kind of that logic, right? How is a business  
9 weighing, like we've identified all these risks, these are the  
10 controls we have, how are we justifying this data processing in  
11 relation to all those risks and benefits and safeguards? So, that's  
12 page 11. Now turning to page 12. This talks about how specific do  
13 we get. I'm just going to-- is it okay if I just defer to this in  
14 staff to explain the two different options?

15 **MS. SHAIKH:** Absolutely. So, with respect to both options, it's  
16 actually helpful to maybe start with the commonalities. So, both  
17 options would require a business in the risk assessment to include  
18 who at the business contributed to it, whether external parties  
19 were involved and who actually reviewed and signed it. Sorry,  
20 reviewed and approved it. And so that would be common across both  
21 options. As you'll see, and I think it's relatively obvious, option  
22 one is definitely a higher level formulation. Option two has a bit  
23 more specificity to it. And so, a couple things that are more  
24 specific, for instance is in number 11, you would have the  
25 individual's qualifications. And so, one difference that you'll see  
26 is in option one, it would be the positions of the people who would  
27 be in the risk-- that would be in the risk assessment. And the  
28 second option, it would be their qualifications. And the idea here

1 is if their position title is analyst, that might not actually give  
2 the business or the Agency much clarity on who this person was and  
3 why they were contributing to the risk assessment. Qualifications  
4 might just be one or two sentences, for instance, of just, you  
5 know, who this person is in the institution of the business and why  
6 they are contributing to it. Another thing you'll see in number 11  
7 is the number of total hours that the business worked on the risk  
8 assessment. This could be helpful. We have an analog also in the  
9 cyber audit regulations. And the idea here is it's helpful for a  
10 business to understand how much time it's spending on a risk  
11 assessment, particularly across different types of activities. It  
12 would also be helpful for the Agency to understand, you know, what  
13 are the variances in how much time these risk assessments take  
14 across processing activities, across businesses within an industry  
15 and across industry. This, I think, gives us some additional  
16 information, particularly as we want to refine the framework as we  
17 go forward. And so, we think those are helpful data points to  
18 consider. And then another addition in option two is numbers 13 and  
19 14 go to who is approving this and is the Board aware. And the idea  
20 really here is that these are accountability mechanisms for the  
21 Board to consider. And it's to really check against the idea that  
22 these are simply paper pushing exercises or check the box  
23 exercises. For these riskier types of processing activities, the  
24 idea behind 13 and 14 is there should be someone more senior in the  
25 business who is approving them. And that, again, for riskier types  
26 of processing that are identified in the regulations, the Board  
27 should also be aware of what the business is engaging in. And so  
28 again, these are potential accountability mechanisms for the Board

1 to consider, whether here, whether other places in the risk  
2 assessment requirements. But the idea again, is that there is some  
3 sort of senior leadership involvement in the risk assessment  
4 process.

5 **MS. DE LA TORRE:** Thank you. I wanted to comment that this is a  
6 little bit prompted by me that having the options. Right now, data  
7 protection impact assessment do not include the number of hours  
8 that individuals are aware. To my knowledge, I've never seen one  
9 that has that information. And it is potentially helpful, but it's  
10 also a burden. Like, you have to count for every staff member that  
11 ever participated in the data protection impact assessment, the  
12 time and then add it up. So cost benefit analysis, the burden that  
13 you're imposing versus the benefit, I think that, you know, there's  
14 a reasonable position to take that maybe is helpful. But we are  
15 requiring hundreds of data protection impact assessment to count  
16 and add the hours. It is a burden. I work as an attorney. I count  
17 my time. It is, you know, you actually have to have software to do  
18 that. Names and titles of individuals which prepare the data  
19 protection impact assessment. Data protection impact assessments  
20 today are signed by somebody who has the responsibility for the  
21 performance of that data protection impact assessments. They do not  
22 include the names and titles of every individual that has  
23 participated. To me, that was a little really privacy intrusive to  
24 think that every person that has participated has to have their  
25 name and title in a document that, you know, may have to be  
26 submitted.

27 **MS. URBAN:** Ms. de la Torre. Thank Mr. Worthe and wish him well  
28 because he has to go.

1           **MR. WORTHE:** Thank you.

2           **MS. URBAN:** Thank you Mr. Worthe.

3           **MS. DE LA TORRE:** No, thank you. Names and categories of  
4 external parties. Same thing, like it is important to know that it  
5 was, you know, thoroughly done, but do we need to have the name of  
6 every external party that has participated? You know, the option  
7 one is how data protection impact assessments are done today.  
8 That's another thing that was in my mind. We talk at the end of  
9 this data protection impact assessment section about how our data  
10 protection impact assessment should be compatible with similar data  
11 protection impact assessment done under other jurisdictions. If we  
12 impose very granular requirements around things that are not really  
13 the core of the assessment, at the minim, we're going to trigger  
14 all of organizations that have done data protection impact  
15 assessments a year ago to comply with Colorado to reopen their data  
16 protection impact assessments to try to identify the names and  
17 titles of the individuals and the number of hours, which probably  
18 they didn't count, so I don't know how they would do that. It just  
19 seemed to me that it had value, but it also was significant burden  
20 that didn't really get to the core of evaluating the actual risk  
21 and identifying the control. So, my preference would be for option  
22 one.

23           **MR. LE:** Yeah. So the question really does become, do we think  
24 listing, you know, the options in number one are enough that a  
25 business will take this seriously, or do we need, you know, this  
26 greater specificity that will come at some costs which may bring  
27 that benefit of, so, you know, I don't have a strong preference  
28 either way but I'd love to hear the best of the Board.

1           **MR. MACTAGGART:** I, I was very much on the same page as Ms. de  
2 la Torre. I thought that, you know, having to calculate the number  
3 of hours or the dates-- We're concerned with the product, I think.  
4 I don't mind that the notion of presenting it to the Board of  
5 directors or the highest ranking executive and having them because  
6 that-- once that highest ranking person or the Board gets involved,  
7 trust me, there's a focus that comes with that. So, I think how the  
8 sausage is made is they're less important than that it's there to  
9 complete at the end. So, my two cents.

10           **MS. URBAN:** Thank you. That all sounds very sensible to me. I  
11 wonder, first, if staff had a recommendation, and then I was  
12 curious about the inclusion of individual names. Do we need the  
13 individual names of everybody? Like, I could imagine certainly the  
14 people who made decisions and whoever signed it. And we would just  
15 tie to how private these risk assessments are, of course, but we  
16 are the privacy agency so.

17           **MS. SHAIKH:** Absolutely. So, I think first it would-- just in  
18 responding to, or not responding, but understanding Board member  
19 Mactaggart's preference would be option one, but potentially with  
20 some addition of the presentation element to more senior members  
21 within a business. I just want to first make sure that I  
22 understand--

23           **MS. DE LA TORRE:** I think that's in number one already. Risk  
24 assessment was received and approved and names of position,  
25 signatures of individuals responsible for the review.

26           **MR. LE:** No, I think you--

27           **MR. MACTAGGART:** I would just do that. Honestly, I probably  
28 would just do 11, 12 and 14 or something like that, or 13 and 14,

1 you know, and get rid of-- But I mean, we're getting into very best  
2 words, I think. So, I want to be sensitive to everybody's time. My  
3 point with the--

4 **MR. LE:** I think that's a good point to make, you know, in the  
5 submission of the risk assessment, we can put in that language  
6 around the executive or the Board. But yeah, sorry, I didn't mean  
7 to cut you off.

8 **MS. URBAN:** And I'm really just asking the question in order  
9 for you to have it as you think about this then.

10 **MS. SHAIKH:** Absolutely. So, in terms of staff's  
11 recommendation, it would be that there are accountability  
12 mechanisms in the framework, whether here or elsewhere. And so, it  
13 seems like that is aligning with what I'm hearing. And again, it's  
14 just a question of where in the framework that would go. And then  
15 Chair Urban, with response to your question of who contributed. So,  
16 there's a bit of-- like both options essentially would have names,  
17 positions, and signatures of individuals who reviewed and approved  
18 it. The idea behind who contributed to the assessment. But I do  
19 take your point about, again, who would view this. And so, like  
20 what would be submitted to the Agency, is particularly for  
21 businesses that may have higher turnover, it may be helpful to  
22 understand how they got to those conclusions, who essentially  
23 building an institutional memory for a business to understand who  
24 at the business actually contributed to the first risk assessment.  
25 Are those people still there when they have to update their risk  
26 assessment? And then particularly if there has been turnover, who  
27 has replaced that person or what team are they in that the business  
28 knows who to go to? And so, there may be a way to balance, you

1 know, having that institutional memory in here without necessarily  
2 having names. And so, that's something that we can think through.

3 **MS. URBAN:** And so, if I understand you, you're thinking, or  
4 not necessarily your personal thinking but the thinking may be that  
5 position wouldn't provide full information where there's turnover.

6 **MS. SHAIKH:** I think it depends, again, on how, like what  
7 businesses would actually put with respect to position. I think,  
8 again, if the position title is analyst without further context,  
9 that might not-- you might need to know again, like who this person  
10 or what their qualifications were, who, where in the businesses is  
11 located. I think though this could just go to wordsmithing of,  
12 again, like what actually-- like, maybe not names, but again, what  
13 division they're in or what department they're in. Just something  
14 to give the business a sense of when it's five years later, 10  
15 years later, and the processing is still continuing, who they  
16 actually went to the first time around. Or you know, who they need  
17 to go to update the risk assessment properly.

18 **MS. DE LA TORRE:** So, I want to clarify my comments from  
19 previous one or two. I think it's perfectly fine for the business  
20 internally to keep track of all of those things. And maybe we have  
21 to have language that says, you know, you shall keep track. But if  
22 we require those to be actually embedded in the data protection  
23 impact assessment, first of all, you know, we say if there's a name  
24 missing, we can impose a fine because you missed the name. Because  
25 we make it an obligation to keep track of it in the data protection  
26 impact assessment, versus keeping it internally by the business.  
27 And the second thing is, we are requiring them to release that  
28 information to the Agency. And, you know, potentially if there is

1 litigation, I guess it could be releasing litigation. So, there  
2 might be a space in the middle when we craft language requiring  
3 that internal rigor in terms of addressing the comments from staff  
4 that, you know, business should be able to update and should be  
5 able to know who participated without making it mandatory to  
6 include that information in the data protection impact assessment.

7 **MR. LE:** I think we got a good steer from everyone on this.  
8 We'll take it back and maybe think about how do we not require  
9 this? Yeah, and I think we all-- I mean, personally, I don't like  
10 tracking hours, so I mean, we just take that out if we, whatever we  
11 end up going with. But I think that's enough for the subcommittee  
12 and staff to--

13 **MS. URBAN:** Everybody who's ever worked on the six-minute  
14 increment.

15 **MR. LE:** Yes, yes. No point one hour. Okay. I think that is  
16 enough information for us to understand, you know, whether it's the  
17 executive Board presentation and maybe some internal tracking to  
18 preserve institutional memory. So next I'm going to go to page 13,  
19 and this is all underlined because this is all, you know,  
20 relatively new. But it's not, you know. This is talking about  
21 additional requirements for businesses using automated decision-  
22 making technology. You know, this is recognizing additional risks  
23 with, you know, personal information used to make decisions about  
24 you that are significant. And, you know, Colorado has similar  
25 language when it comes to profiling. You know, they also ask for,  
26 you know, explanation of why the businesses is using ADMT, what  
27 type of information is used. So, the purpose, the inputs and data  
28 sets for number two, number three on 7153 talks about, you know,

1 the outputs, you know, types of predictions and recommendations and  
2 decisions they make. So, explaining about how all that is used, and  
3 an explanation for number four of the steps they've taken to, you  
4 know, make sure that the data used in these automated decision-  
5 making technologies are, you know, representative, there's proper  
6 training, there's accuracy, and, you know, we've seen harms in  
7 other-- a lot of other examples, you know, whether in, you know,  
8 Michigan, the Netherlands, you know, healthcare, about how bad data  
9 sets can result in bad decisions. So, we wanted to make sure  
10 businesses are explaining how they're, you know, securing their  
11 data, making sure that works properly for the purposes they're  
12 trying to use it for. Number five, plain language explanation of  
13 how the ADMT works. So, let us know, you know, how does this system  
14 use all of this information to make its decision? And then number  
15 six is, you know, explain how a business is using ADMT. They're  
16 evaluating the ADMT for validity, reliability and fairness. You  
17 have definitions there. But the idea there is like, do we know that  
18 the system actually works? Do we know that it's fair? Do we know  
19 that it is consistent? Right? What if it works in a test  
20 environment, but you bring your own data after you purchase a  
21 system to a new context, and it's no longer accurate or reliable.  
22 So, you know, this is trying to make sure that businesses are  
23 properly considering those risks. And I'll note, you know, this is  
24 relatively new. This isn't really in a lot of other jurisdictions  
25 right now, but it is in the NIST, National Institute of Science AI  
26 Risk Management Framework and there isn't a lot of-- there's a lot  
27 of different ways you can approach fairness, validity, reliability  
28 in any automated decision system. And I don't think, you know, we

1 as an agency or most other agencies want to be the ones saying,  
2 this is exactly how you do it. But it is important to know how are  
3 you approaching this question. And, you know, by having this logged  
4 in a risk assessment, we can begin to understand best practices or  
5 things that aren't best practices when, you know, testing your  
6 systems. And that's why we also ask for metrics for how they use  
7 that. So, I'm on page 14 now, if you're following along.

8 **MS. DE LA TORRE:** I want to go back to 13 for a second because  
9 I realized when I was reading this, our cross-reference, if a  
10 business is using automated decision technology for the purpose for  
11 in 7030, 7031, these are rules that we haven't presented to the  
12 Board yet. This is the next branch of rules, right? Like, this  
13 doesn't correlate to what we were talking about, which is 7050(b).  
14 I made the assumption that we will correlate it to the data  
15 protection impact assessments, but we seem to be correlating it to  
16 something that the Board has not seen.

17 **MS. SHAIKH:** No, it will be the idea here, again, it is a bit  
18 difficult when the Board has not seen the ADMT package, but the  
19 idea here is any threshold for an ADMT access and opt-out right  
20 will also be a threshold for risk assessment. And so, there will  
21 not be, there should not be a variance between them. Essentially,  
22 if it's a significant risk to consumer's privacy that you need to  
23 do a risk assessment, consumers likely should also be able to  
24 access an opt-out or have access and opt-out rights. So, we  
25 referenced 7030 and 31 here, just to make that point clear, that  
26 there's going to be essentially like there will be a clear through  
27 line. You have to do a risk assessment and access and opt-out  
28 rights, and it will be consistent with the thresholds in 7152, or

1 at least it'll be presented to the Board in a manner that's  
2 consistent, and, of course, the Board can adjust as necessary.

3 **MS. DE LA TORRE:** Yeah, because one of the things that I think  
4 we have to consider when we see the whole thing is whether this  
5 belongs here, or it belongs more appropriately in the automated  
6 decision-making technology opt-out piece. And I don't think that we  
7 can make that determination without seeing that.

8 **MS. URBAN:** These items in the list though are items that would  
9 need to be considered for the risk assessment. Right?

10 **MR. LE:** Yeah. So, I think--

11 **MS. URBAN:** And the question is just if the risk assessment is  
12 required, which it's required automatically, if I'm understanding  
13 this properly, if you are going to be subject to the opt-out et  
14 cetera requirements under the rules we haven't seen yet. So, I  
15 think it's just a cross-reference that will be a trigger threshold  
16 that we don't know exactly yet. But once that's triggered, these  
17 are the steps. Is that correct?

18 **MR. LE:** Yeah. I mean, I think so. I'll just say, you know, I  
19 don't think there's different approaches. I personally think we  
20 should combine this with ADMT sections, you know, together we can  
21 consider them together. But, you know, for the purposes of today,  
22 we just wanted to present the risk assessment language. But you  
23 know, generally, you know, if you're making a decision that is  
24 resulting in, you know, legal assimilation effect, well that's not  
25 the exact language, making decisions that access your opportunity,  
26 then you're probably going to do this. We haven't finalized the  
27 language, so I should say we table that discussion about 7030--

28 **MS. URBAN:** No, that's fine. I just was making sure I

1 understood the connection. Like, these are risk assessment. This is  
2 a list of risk assessment components if it's triggered.

3 **MR. LE:** Yeah.

4 **MS. URBAN:** Mr. Soltani?

5 **MR. SOLTANI:** Are you guys done with that? Before you jump  
6 ahead, can I suggest we maybe take comment, take the other two, and  
7 then come back?

8 **MR. LE:** I think we're almost done.

9 **MR. SOLTANI:** Okay. That's great. So, set. As long as we kind  
10 of wrap by comment by 4:45, that'd be great.

11 **MR. LE:** Okay.

12 **MR. MACTAGGART:** Mr. Le, can I just say item four on the bottom  
13 of page 14, four and five, I just-- four, five and six actually  
14 felt-- that felt like overreach in the sense that I'm a business,  
15 I'm trying to find-- I'm using, you know, automated decision-making  
16 and I'm trying to test, I don't know whether it works or not. And I  
17 have to now keep track of every single one, every single version I  
18 ever tested, because this one turned out not to be reliable. This  
19 one turned out not to be fair. Again, I come back to-- I think  
20 we're mostly concerned about is which one did they end up using?  
21 And, you know, if this notion is, well, we got to catch them if  
22 they used one that came up with a different solution.

23 **MR. LE:** Yeah. No, I get your point. And we could take that  
24 back in the subcommittee. What this stems from is when you have  
25 systems that create a disparate impact, one of the things that, you  
26 know, the court legal system will look at is like, so you have a  
27 system that discriminates, right? And you've justified it under  
28 your business necessity. One of the questions the legal analysis

1 looks at is, are there less discriminatory ways that you could  
2 apply this system? Right? Not using certain data or whatnot. So,  
3 this is trying to capture, like, did you go through that process  
4 when you developed your system? Like, you know, so that is the idea  
5 there, but maybe we could be around, like have you, you know, what  
6 other alternatives have you considered? Maybe less detail there.  
7 But I think that was the intent for at least me personally when I  
8 pushed for this language.

9 **MS. DE LA TORRE:** And I think that consideration here that we  
10 have to be aware from a policy point of view is information that  
11 goes into data protection impact assessment is information that is  
12 recorded for the evaluation of risk purposes by the organization,  
13 but not necessarily information that is presented to the user for  
14 transparency. And that's why I think that part of this  
15 conversation, we can take the input, but it might be better had  
16 when we have the full comment.

17 **MR. LE:** Yeah.

18 **MS. DE LA TORRE:** Because it might be that some things can be  
19 addressed better through transparency to the user rather than  
20 through the data protection impact assessment. And even the  
21 subcommittee, we don't-- I have not personally formed my mind on  
22 this because we don't have a fully baked version of the automated  
23 decision-making piece. So, if the Board is in agreement with giving  
24 us flexibility in terms of, you know, modifying this, maybe some of  
25 these might move to the ADMT piece, maybe some of these will stay.  
26 We can, you know, take the comment that we have that we've been  
27 receiving, and have that conversation again when we have the ADMT  
28 draft released.

1           **MR. LE:** And maybe we just add. Yeah, I mean, I agree with  
2 that. And to Mr. Mactaggart's point, maybe we just add, you know,  
3 for the purposes of finding less discriminatory alternatives or  
4 complying with anti-discrimination laws,

5           **MS. DE LA TORRE:** Right. Because if-- and another thing on the  
6 automated decision-making in AI which, is I, you know, have maybe  
7 more awareness or connectivity with Europe, they are working on an  
8 AI act which might or might not pass this year. And they have a  
9 number of requirements. If it is enacted, I think it will be worth  
10 looking at the standard that they are going to set and whether we  
11 want to potentially reconsider our standard on the basis of what  
12 they are enacting to just create more commonality and  
13 interoperability. But their requirements are going to be different  
14 based on the type of AI. So, they have a kind of at risk pyramid  
15 where some AI is basically prohibited. A second trench is subject  
16 to a lot of requirements. There is a third and fourth layers that  
17 are not, and we just don't have the capability, I think, in terms  
18 of this initial approach to the rules to kind of embed that. But I  
19 like their structure in terms of if there's AI systems that are  
20 more problematic that we might require more obligations around,  
21 versus to Mr. Mactaggart's point, there might be AI systems that  
22 are making decisions that we are not concerned about. And maybe we  
23 don't-- you know, we can be more flexible with the requirements for  
24 those systems when it comes to the data protection impact  
25 assessments. I think that we're-- are we being asked to go to  
26 comments?

27           **MR. LE:** No, we have about 45. So, we have about 20 minutes.

28           **MS. URBAN:** We do have two other agenda items with public

1 comments so.

2 **MR. LE:** Okay. Well, I'll try to finish in 10.

3 **MS. URBAN:** Pause and do public comments and then finish our  
4 discussion.

5 **MR. LE:** Okay.

6 **MS. URBAN:** I think, yeah. Alright Mr. Sabo, is there a public  
7 comment?

8 **MR. SABO:** Yes, there appears to be first, John Davison. John,  
9 I will call your-- or I will unmute you in just a moment and you  
10 will have three minutes to make your comment. Please-- oops. Of  
11 course, now John is gone. One second. There we go. John, please go  
12 ahead whenever you're ready. You have three minutes.

13 **MR. JOHN DAVISON:** Hello. I'm John Davison, director of  
14 litigation at the Electronic Privacy Information Center, or EPIC.  
15 Thank you for the opportunity to comment today and for the  
16 important work that the Board and the staff of the CPPA are  
17 continuing to do. We've shared our views previously on regulatory  
18 approaches that we think the agency should take on risk  
19 assessments, and we anticipate providing further input in the  
20 future, but I just want to make three points today about risk  
21 assessments and the rules. First, I just want to offer our praise  
22 for the direction of the draft rules. We've been very encouraged to  
23 see that the draft recognizes a wide range of processing activities  
24 that present significant risk that it would require full  
25 stakeholder involvement, and that it would mandate robust consumer-  
26 centric assessments that would require businesses to explain  
27 whether and how the benefits of processing outweigh the risks.  
28 Second, although we support the specific examples of risky

1 processing activities in the draft, we continue to think that the  
2 Board should adopt an overarching definition of significant risk as  
3 a backstop to the enumerated examples. This umbrella definition  
4 would account for emerging processing activities that may pose  
5 heightened risks, which aren't apparent from the current state of  
6 technology. It would also provide an additional point of guidance  
7 for determining whether a processing activity requires the  
8 completion of an assessment. Finally, I want to emphasize the  
9 importance of ensuring public access to as much of the content of  
10 risk assessments as the law will allow. Public accountability is  
11 not a secondary issue or one that the Board can afford to delay  
12 action on. It's critical to the efficacy of the risk assessment  
13 framework. The public deserves a full accounting of how businesses  
14 are handling their personal information and assessing the risks  
15 that data processing poses. We're mindful that the statute protects  
16 businesses from the disclosure of trade secrets, but there's still  
17 a great deal that can be done to ensure public transparency of risk  
18 assessments without crossing that line, and we're eager to work  
19 with the Board to make that a reality. Thank you for your time.

20 **MS. URBAN:** Thank you, John Davison. Mr. Sabo, is there further  
21 public comment?

22 **MR. SABO:** Yes. Chris, I will unmute you and you'll have three  
23 minutes to make your comment. Go ahead and begin whenever you're  
24 ready.

25 **MR. CHRIS FRASCELLA:** Thank you. This is Chris Frascella,  
26 counsel also at EPIC. Just wanted to express support quickly for  
27 three things related to the cybersecurity audits. In section 7120,  
28 very encouraged to see that undercapitalized data brokers would be

1 governed by the cybersecurity audits. This is important because  
2 while they may not have the revenue to adequately safeguard the  
3 volume of data they choose to collect, that doesn't mean that the  
4 data shouldn't be protected. In section 7123(b), encouraged by the  
5 staff's explanation of why it's helpful to articulate the types of  
6 harms to consumers that an auditor should be mindful of in  
7 conducting their audits. And the point that it's not just about the  
8 risk to the company, but also considering risks to consumers and  
9 not merely financial risks to consumers. And the, the idea of a  
10 cross-reference to the DPIA or providing a list of examples, I  
11 think makes sense and could achieve this purpose. And then lastly,  
12 in 7123(c), very encouraged to see the list of components included  
13 there, especially the personal information inventories in  
14 subsection (2)(E). So, thank you all for the great work you're  
15 doing here. That's all.

16 **MS. URBAN:** Thank you, Chris Frascella. Mr. Sabo, is there  
17 further public comment?

18 **MR. SABO:** Again, this is for agenda item 8, New CPRA Rules  
19 Subcommittee Update. If you'd like to make a comment on this agenda  
20 item at this time, please go ahead and raise your hand using Zoom's  
21 'Raise Hand' feature or by pressing \*9 if you're joining us by  
22 phone. This is for agenda item 8, New CPRA Rules Subcommittee  
23 update. Madam Chair, not seeing any additional hands.

24 **MS. URBAN:** Thank you, Mr. Sabo. And thanks so much to our  
25 commenters on this item. Mr. Le, I'll turn it back over to you.

26 **MR. LE:** Yes, that was great. There wasn't too many comments,  
27 so we have a little bit more time, and I imagined so I don't have  
28 to speak as fast. Okay, so we were on page 15, I believe. Let me

1 check.

2 **MR. MACTAGGART:** I just had one question. Under seven there?

3 **MR. LE:** On page 15?

4 **MR. MACTAGGART:** Yeah. 15. Which was not around this, the  
5 substance, which I thought was fine. I just wondering why it was  
6 here and not in-- where (a) (11) or (12). No, I'm getting my as  
7 mixed up.

8 **MR. LE:** Yeah, it's hard to dig around. Some of the initial set  
9 of risk assessment requirements.

10 **MR. MACTAGGART:** Yeah, yeah, yeah.

11 **MR. LE:** Let me double check.

12 **MR. MACTAGGART:** Yeah, I think it's 7152(a). It just felt like  
13 it belonged back there.

14 **MS. DE LA TORRE:** [inaudible] look into that?

15 **MR. LE:** Yeah, the [inaudible]. Well, we can hand you a mic.

16 **MR. MACTAGGART:** We'll relate.

17 **MR. LE:** Yeah, yeah, we can hand you a mic.

18 **MS. URBAN:** Many mics are coming to you.

19 **MS. SHAIKH:** Alright. And I currently have seven.

20 **MR. LE:** That's okay. We've got it figured out. Yeah.

21 **MS. SHAIKH:** And thank you, general counsel, for passing me a  
22 mic. And so, this is ultimately a policy question for the Board.  
23 You, the Board could consider having as just a general requirement  
24 in the risk assessment, having a business document, why it did not  
25 consult external parties. Again, in the general requirement, it  
26 would be whether you consulted external parties, and for the  
27 specific risk assessments that are about the use of automated  
28 decision-making technology because of the various risks that the

1 specific risks with ADMT. That's why here, it's not only whether  
2 you consulted, but really, it's if you did not, why did you not?  
3 And this goes to just, again, some of the heightened risks that we  
4 see in the use of automated decision-making technology. But if the  
5 Board feels strongly that this should actually apply in the general  
6 requirements for all processing, which is, again, it's not actually  
7 a requirement that you consult external parties. It's just, and if  
8 you didn't, explain why you did not and what safeguards you've  
9 implemented, that that should actually apply for all of the  
10 thresholds, then, you know, we can take that under consideration as  
11 well.

12 **MR. MACTAGGART:** Yeah. I don't-- I'd feel not very strongly  
13 about this, but it just struck me it as a good idea. So why  
14 wouldn't it apply to everything? But again, I'm not trying to--

15 **MR. LE:** Yeah, we'll take that back to the--

16 **MS. DE LA TORRE:** I think that it's highly likely that our  
17 rules will trigger data protection impact assessments for  
18 situations that are high risk and for some situations that are  
19 more, I guess, mundane or narrower, so I'm not-- we can take it  
20 back.

21 **MR. LE:** Let's take it back. Yeah.

22 **MS. DE LA TORRE:** I can take it back like--

23 **MR. LE:** Yeah, yeah.

24 **MS. DE LA TORRE:** You know, I can imagine like processing  
25 sensitive personal information. You can have, you know, healthcare  
26 informa-- let me give you an example. If you are running a  
27 diversity and inclusivity program and they're taking sensitive  
28 information of employees in the context of that, we don't have a

1 carve-out for that in processing of sensitive information. So, you  
2 might have to do a data protection impact assessment that is fairly  
3 simple saying, okay, this is voluntary. You know, people just have  
4 to participate. There's consent. I'm not sure that that requires an  
5 explanation of why you didn't consult other experts, because it  
6 might be narrow enough to kind of not justify that. But we can  
7 definitely--

8 **MR. LE:** Yeah, let's just-- yeah. Yeah. But that's a good  
9 explanation of that circumstance. Okay, so I'm on page 15, number  
10 eight. Number eight just asks about, you know, how are humans  
11 involved in the use of ADMT? And we have, you know, several  
12 different permutations of that, you know, who's responsible overall  
13 and, you know, the qualifications and the evaluation process. And,  
14 you know, the different safeguards that a business plans to  
15 implement to address the negative impacts of consumer's privacy.  
16 That's number nine. So, moving on to 7154, this is additional  
17 requirements for businesses that process PI to train AI and ADMT.  
18 You know, these are powerful tools and, you know, we proposed these  
19 regulations to ensure that, you know, people know the limitations  
20 of these tools, some sort of type of warning label and making sure  
21 that businesses think about the limitations of those tools. 7155,  
22 it just says, you know, if you can't, you know, in good faith,  
23 determine that, you know, the risks have been properly mitigated  
24 and the risks outweigh the benefits, then you just shouldn't do  
25 that. And that's in the statute and this is just kind of you know,  
26 making that clear. And then number 7156 at the bottom of page 16  
27 talks about the timing requirements, and here there's two options  
28 and again, I will defer to Neelofer to explain these two options.

1           **MS. SHAIKH:** Thank you. So, again, this is ultimately a policy  
2 question for the Board about what is the appropriate cadence to set  
3 for businesses to potentially automatically review their risk  
4 assessments to ensure they remain accurate. And so, option one has  
5 a set cadence of three years. Again, whether or not it's actually  
6 three years is a question for the Board, but the idea behind the  
7 first option is, you know, after a certain period of years, a  
8 business will review its risk assessments, ensure they remain  
9 accurate and then update them as necessary. Under option two,  
10 there's not necessarily a set cadence across all risk assessments.  
11 Rather, it would be that a business reviews and updates as  
12 necessary, its risk assessments. So, the idea here is just a  
13 general requirement. However, for risk assessments related to the  
14 use of automated decision-making technology, that are subject to a  
15 risk assessment, not just any use. Those would be reviewed and  
16 updated again at a set cadence. There's a few options here. There's  
17 annual, biannual, once every three years. And so, these are just  
18 different mechanisms. Again, the idea behind a risk assessment,  
19 it's not a one and done. There is the idea that it is some-- it's a  
20 living document that a business will continually review and update.  
21 And it's just a question of what is the most effective or what is a  
22 reasonable way to ensure that businesses in their policies and  
23 procedures develop a way to continually review their risk  
24 assessments.

25           **MR. LE:** Yeah. And real quick, can you also explain, you know,  
26 how this fits in with, you know, number three, which already  
27 requires an update?

28           **MS. SHAIKH:** Absolutely. So, number three would be a distinct

1 requirement. Number three is when there's a material change in the  
2 processing. It doesn't matter if it's been six months after the  
3 processing has started, it doesn't matter if it's been 10 years. If  
4 there's a material change in the processing activity and there are  
5 some-- there's a definition of what is material included as well as  
6 some examples that the Board could consider if they think it would  
7 be helpful for businesses. That would require that a risk  
8 assessment is updated. And then again, with the options that we're  
9 discussing, that's really how often, if there's no material change  
10 to the processing, how often should a business continue to review  
11 its risk assessments. And so, you could think about, again, maybe  
12 an example here could be helpful. Say, oh, actually I will stop.  
13 Mindful of time, Board member Mactaggart, I saw that you had a  
14 comment.

15 **MR. MACTAGGART:** Yeah, just answering that question. My point,  
16 my two cents would be, given that you have the safeguard of three,  
17 which covers the material change, and you could spend time to, you  
18 know, defining any material if you wanted, which you kind of have.  
19 So, I feel like simpler option one is better. Because then it's  
20 just, at least they know what they have to do, because otherwise,  
21 you might say, well, here's material. But now option two is like,  
22 they're being accurate. I've changed one little thing, it's not  
23 accurate anymore. Now they're going to come get me. So, I feel like  
24 let's just-- I would do two and option one and three.

25 **MS. URBAN:** I agree with that. Number one and number three are  
26 the sort of substantive triggers, which we see a lot in risk  
27 assessment. So those, as you pointed out, Ms. Shaikh, they're  
28 already there. And beyond that, the options in the box seem to me

1 additional or extra or sort of catch up or, you know, if the  
2 business, for example, wasn't, you know, keeping good records and  
3 they had a material change, they would still have the opportunity  
4 to catch up if they knew they needed to do it on some set cadence.  
5 That seems the simplest to me.

6 **MR. MACTAGGART:** Okay.

7 **MS. DE LA TORRE:** So, I think that I was a little bit triggered  
8 for this part. So, I totally agree with the feedback that we have  
9 received. The way data protection impact assessments are done today  
10 is triggered by you start the activity, you do a data protection  
11 impact assessment. You don't have to change that if you don't  
12 change your activities. When your activities changing a material  
13 way, that's automatically trigger an update. And that's connected  
14 with one and three. I was not seeing the full benefit of requiring  
15 that every three year update because it's a little bit of  
16 potentially, you know, paperwork that doesn't have substance. If  
17 you require every business to every three years update the  
18 definition impacts assessments that might not need to be updated,  
19 they will, you know, be-- there will be a tendency to just generate  
20 new identical paperwork every three years. And I didn't see  
21 necessarily the benefit of that. But the language around risk  
22 assessment for processing that uses automated decision technology  
23 having some form of cadence with something that I was supportive  
24 of, just because we know that automated decision technology in some  
25 cases can create significant risk of discrimination that might not  
26 be obvious to the business. They might not have materially altered  
27 their operations, yet their system is potentially doing things that  
28 they are not necessarily aware of. So, that, seeing some form of

1 cadence for them to reconsider whether that automated decision  
2 technology is actually causing risks seem reasonable. And I think  
3 that's consistent with the feedback.

4 **MR. LE:** Well, yeah, I mean, I think the feedback is-- I mean,  
5 as you can correct me if I'm wrong, is that we wanted businesses  
6 who may let things fall through the cracks. Every couple years,  
7 they'd be like, wait, was there a bunch of material changes or were  
8 there a bunch of little changes that together make material change?  
9 And, you know, if you look at it after three years, there's no  
10 need, nothing's really changed, then you just resubmit your old--  
11 so I mean, yeah. I mean, I see your point. It is just, do I think--  
12 I don't think that three year obligation is as significant, but I'm  
13 not, like you, a practitioner in this sector.

14 **MS. URBAN:** I agree with Mr. Le, and I also think that this is  
15 something that we could choose one, I agree with Mr. Mactaggart and  
16 Mr. Le that the simpler one is maybe more straightforward, and we  
17 will have public comment and people can tell us if this would mean  
18 something that we're not understanding. I'm a little concerned  
19 about actually adding burden to businesses to have to sort out  
20 what's automated decision-making technology and like, that's  
21 another cadence. But I don't think we know exactly how this is  
22 going to play out, and I don't feel strongly about this.

23 **MR. LE:** Okay.

24 **MS. URBAN:** But that's my take.

25 **MR. LE:** Okay. Well, I mean to the public, please comment on  
26 this when this official rulemaking starts. Okay. I think that's  
27 enough to move on. Yeah, so 17 and 18 just talks about different  
28 types of material changes. These generally correspond to the other

1 requirements within the risk assessment. So, yep, they're all  
2 there. I'm not going to read them out. So, page 19. Well, actually  
3 no, I'll first see the page 19. See, this talks about processing  
4 activities that happen before the effective date of these  
5 regulations. And there is a 24-month window to, you know, get up to  
6 date on your risk assessments for, you know, processing activities  
7 that happen before these regulations. Twenty-four months was just a  
8 placeholder. I think we had some similar language for cybersecurity  
9 audits. But I did want to get Board input on whether or not that's  
10 too much time. You know, is it 12 months the better time? I know in  
11 other jurisdictions, like the EU, you know, the business only had  
12 like six months to make big changes. So, I mean, that may be too  
13 fast. But is 24 months the right number? Do we not have strong  
14 feelings on that? Is 12 months the better number? I'd like to open  
15 that up for discussion.

16 **MS. URBAN:** Yes. Mr. Soltani. The time. Yeah. I think--

17 **MR. MACTAGGART:** Just to answer Mr. Le's question, I didn't  
18 feel strongly but I thought, you know, 12, 18 months, 24, I think  
19 12 gets on the short side.

20 **MR. LE:** Okay.

21 **MR. SOLTANI:** Just that the building will be locked.

22 **MR. LE:** Okay. We've only got--

23 **MS. DE LA TORRE:** I think the submission--

24 **MR. LE:** You're slowing us down, Mr. Soltani.

25 **MR. SOLTANI:** Sorry.

26 **MS. DE LA TORRE:** The submission piece because--

27 **MR. LE:** Yes. We'll have a discussion on that. Yeah. So, you  
28 know, 7157, you know, this allows you to combine multiple

1 processing activities into, you know, a single risk assessment  
2 that's-- you've seen that in other jurisdictions. So, 7158, the  
3 last significant thing to discuss is, once you've done this, how do  
4 we submit it to the agency? We talk about an abridged form, and  
5 perhaps if we have time, there's some comments on what should be in  
6 that abridged form. But the idea here is the agency would receive,  
7 you know, at least some certification that this risk assessment was  
8 done. And, you know, key information that ideally in my perspective  
9 would be made public. You know, that could be that idea of how  
10 you've balanced those risks and benefits. It could be as specific  
11 as, you know, the metrics that you've used, assuming they're not  
12 trade secrets, but that's how we-- the idea of, you know, a  
13 submission annually,

14 **MS. DE LA TORRE:** We read our statutory delegation to give us a  
15 range of options. One option will be requiring that physically  
16 every data protection impact assessment be submitted to the Agency  
17 or be submitted via an electronic portal, the actual document. And  
18 we felt that that could generate, number one, a database that can  
19 be potentially large, that the data protection impact that the  
20 Agency will have an obligation to keep secure and contain, we felt  
21 that the volume of data protection impact assessment that could be  
22 submitted through that process will be so large that our staff--  
23 they're great, they're, you know, really motivated, but we don't  
24 want to burn them out. So, we just-- there is not enough hours for  
25 our staff to read every data protection impact assessment that will  
26 be submitted. We also thought that because there is obligation to  
27 submit this data protection impact assessments on request, our  
28 staff has the ability to say, okay, we are concerned right now

1 about X number of operations. They can reach out to business and  
2 say, you are to submit to me the actual data protection impact  
3 assessment for this set of operations that we have identified are  
4 risky and use those data protection and impact assessments to  
5 obtain more information. So, we felt that this was a balancing act  
6 and that it would be better for staff, for the Agency, for the  
7 regulated community to enable a process that can give the data  
8 protection, the California Agency enough information to understand  
9 that businesses are generally in compliance. We see that we have  
10 submissions of certification for a large number of business. We  
11 have an idea of what kind of topics these submissions relate to, as  
12 opposed to just making it mandatory to submit the actual data  
13 protection impact assessment to the Agency. So, those were the  
14 considerations that we balance when we came up with these suggested  
15 approach.

16 **MS. URBAN:** Thank you, Ms. de la Torre. That all seems quite  
17 sensible to me. And as far as the details are concerned, what I  
18 would really value would be, you know, staff's recommendation on  
19 language based on more information that I have in the background.  
20 If anyone else on the Board has more information and specific  
21 guidance, I'm sure the subcommittee would like to hear it. But as  
22 with the cybersecurity audits, my feeling is that we've had quite a  
23 robust discussion about some of, you know, the sort of soft points.  
24 I don't know how to put them, it's late in the day. And, you know,  
25 I at least am very much ready to once again maybe have the  
26 subcommittee sit down with staff again and sort of have discussion  
27 of the Board discussion and make some decisions so that then the  
28 Board is able to provide feedback. And maybe these are two

1 connected to the other ones for that to work in the same way, but I  
2 think that we, you know, you've-- let me just back up, because I  
3 realize I'm not sure I said this clearly, and even though it's late  
4 in the day, I think it's really important to say it, which is that  
5 this is tremendous work in every sense of the word. It's incredibly  
6 thoughtful, it is thorough, it takes into account all the  
7 considerations I think that we would hope. And I really commend and  
8 thank Ms. Anderson, Ms. Shaikh, anyone else on your team who worked  
9 on this and the subcommittee for everything that's gone into this.  
10 I think it has put us in an admirable place where we could move  
11 this forward, in my view from a process perspective, is we want to  
12 have robust discussion. We want to think about it carefully, but we  
13 also need to get public input. And we're never going to hit exactly  
14 the right time because the tech is moving, the business is moving,  
15 the practices are moving, and it's not going to be, you know, it's  
16 always going to be a moment in time. And so, I would like to see us  
17 seize that moment when we can. Mr. Mactaggart?

18 **MR. MACTAGGART:** I'd like to echo those comments. I was really  
19 impressed, so I want to thank the subcommittee, the staff who  
20 worked on both these rules. Just very impressed with how much work  
21 was in them, how extensive and comprehensive they were. So, thanks.

22 **MS. URBAN:** Thank you, Mr. Mactaggart.

23 **MR. LE:** So, yeah, we are-- we needed to get to the last agenda  
24 items. So, I think as a subcommittee, we hope to release this out  
25 of the subcommittee process by the next Board meeting, probably not  
26 before.

27 **MS. URBAN:** Okay.

28 **MS. DE LA TORRE:** But I think that cybersecurity rule--

1           **MR. LE:** The cybersecurity, we'll try to review, yeah.

2           **MS. URBAN:** Of course.

3           **MS. DE LA TORRE:** And then the privacy impact assessment, we  
4 probably need to see them side by side with it.

5           **MR. LE:** Yeah, so the idea is, in November, you'll see a, you  
6 know, we'll take the input you have here, we'll get a more final  
7 draft together and with a hope of releasing it to the Board, full  
8 Board at the next Board meeting.

9           **MS. URBAN:** Thank you. Does that work on the staff and counsel  
10 side?

11          **MR. LAIRD:** Yes, it does.

12          **MS. URBAN:** Okay. Wonderful. Thanks everyone, everyone who  
13 contributed to these really impressive materials and to everyone  
14 including Mr. Worthe in his recent absence for the careful  
15 discussion, which I hope has been beneficial to the subcommittee  
16 and to the legal team in their work. And with that, let's move to  
17 agenda item number 9, which is our agenda item for public comment  
18 on items not on the agenda. This is the moment in which members of  
19 the public are able to comment, to provide us comments even on  
20 items that are not on the agenda. Before we proceed, please note,  
21 however, that we can only listen as the Board. We cannot take any  
22 action other than to perhaps consider putting something on an  
23 agenda for a future meeting. It may seem like we're being not  
24 responsive. We are not. We are listening. It's simply that  
25 following these rules is critical to ensure that we remain in  
26 compliance with the Bagley-Keene open meeting act, and we haven't  
27 accidentally compromised the commenter's goals or the Board's  
28 mission. With that, Mr. Sabo, may I ask if there's any public

1 comment?

2 **MR. SABO:** Yes. Angelina H, I'm going to unmute you at this  
3 time, and you'll have three minutes to make your comment. So,  
4 Angelina, you've been unmuted. Please go ahead whenever you're  
5 ready.

6 **MX. ANGELINA HOVAN:** Thank you. My name's Angelina Hovan, and I  
7 work in risk management at a bank in Sonoma County, California. And  
8 I have found that the GLBA exemption seems to be a little  
9 mysterious for some of my peers. And we are taking it very  
10 seriously, this privacy act here in the state of California, and  
11 really getting into the spirit of the regulation as far as, you  
12 know, it goes with joint marketing, profiling, that sort of thing.  
13 But I am finding that some of our peers are hiding behind, for lack  
14 of a better term, the GLBA exemption, and insofar as not even  
15 responding to requests or responding to requests that they don't  
16 have to respond to requests because they're exempt under GLBA. So,  
17 I would like to see if the GLBA exemption could be discussed in a  
18 future meeting to really clarify for banks what their  
19 responsibility is. I understand that it's the information that  
20 falls under GLBA that's protected, but not the organization. And  
21 so, I really want to just get a greater understanding of, you know,  
22 are we going overboard by trying to comply with every letter of the  
23 law or are we actually taking the safe route by you know, following  
24 it exactly to the letter of the law as we translate it, and as we  
25 are assisted by Bankers' Compliance Group. So that's just my common  
26 is I'd like to see that as a subject at some point. Thank you.

27 **MS. URBAN:** Thank you very much. Thank you very much Angelina  
28 Hovan. I'm sorry, I think I only stepped on your thank you. Are

1 there further public comments, Mr. Sabo?

2 **MR. SABO:** Yes, Elizabeth Magana, I'm going to unmute you at  
3 this time, and you'll have three minutes to make your comment.

4 **MX. ELIZABETH MAGANA:** Yes. My name's Elizabeth Magana. I'm  
5 here on behalf of Privacy4Cars. I just wanted to thank the Board as  
6 well as the staff members for this opportunity to submit our public  
7 comment. So, we continue to have consumers visit our free tool on  
8 vehicleprivacyreport.com to learn about what data car manufacturers  
9 are collecting about them and to whom the data is shared with.  
10 These same consumers have asked us to minimize their data  
11 footprint. And in doing so, we have experienced great difficulties  
12 in receiving any responses from businesses to the data subject  
13 requests made. Our question really is what is the best way to  
14 provide comprehensive feedback on these deficiencies that we've  
15 observed, especially as authorized agents, because businesses are  
16 creating hindrances in violation of the spirit and the letter of  
17 the regulation. Thank you.

18 **MS. URBAN:** Thank you very much for the comment. Mr. Sabo, are  
19 there further public comments?

20 **MR. SABO:** This is for agenda item 9, Public Comment on Items  
21 Not on the Agenda. If you'd like to make a comment on this item at  
22 this time, please go ahead and raise your hand using Zoom's 'Raise  
23 Hand' feature or by pressing \*9 if you're joining us by phone.  
24 Again, this is for agenda item 9, Public Comment on Items Not on  
25 the Agenda. Madam Chair, I'm not seeing any further hands.

26 **MS. URBAN:** Thank you, Mr. Sabo. And thank you so much to the  
27 commenters for your participation today and for your thoughts. We  
28 now turn to agenda item number 10, which is our designated time to

1 talk about future agenda items. I'll first go over quickly my list,  
2 so everyone knows what I have on the list at the moment. On the  
3 regularized annualized calendar for our next meeting, we have  
4 legislation item in which the Board considers an approved, excuse  
5 me, Agency legislative proposals. That is proposals the Agency  
6 itself might want to make. Our biannual regulations, proposals and  
7 priorities. So, we did a discussion of this in May, and this will  
8 be our second one for the year. And our executive directors' annual  
9 review, and we will be considering with staff when it makes sense  
10 to talk about the agency activities and different conferences and  
11 so forth that may not be in the next meeting but it's on the list.  
12 We also have on the list everything that we've spoken about under  
13 the New CPRA Rules Subcommittee's work. So, the form of the  
14 cybersecurity audit draft regulations and impact assessments that  
15 we discussed earlier. I won't go over the process again. And we are  
16 expecting also to talk about the automated decision-making,  
17 rulemaking when that is ready. We will have another stage of  
18 discussion on strategic planning as we heard from Sorello today.  
19 The rulemaking process subcommittee, which is Ms. de la Torre and  
20 myself. Expect that within the next couple of meetings. We will  
21 have a report on the insurance provisions, which again, I will  
22 truncate my explanation of that, to offer to the Board and an  
23 update on our thinking about rulemaking process. When the chief  
24 privacy auditor hiring gets to the appropriate point, we will  
25 expect to talk about that in closed session, should the timing work  
26 out per our July meeting, and the sort of process we decided on  
27 there. And that is my list. I already talked about the last thing,  
28 but I do want to remind everyone that one of the items that can be

1 brought up under this agenda item are any topics for rulemaking  
2 that you want to announce in a Board meeting as opposed to directly  
3 mentioning to staff. So, with that, are there any additional items  
4 that the Board members would like to suggest for me to take down?

5 **MS. DE LA TORRE:** I have a request. It's not an additional item  
6 but I think it will be ideal in the next meeting if we could, in  
7 the agenda, make the update from the rule subcommittee, the New  
8 Rules Subcommittee, item number one or two, just bring it to the  
9 beginning of the meeting. I think that it will allow more people to  
10 comment. It's highly likely that the number of participants, the  
11 clients, because our meetings are fairly long, and I think it also  
12 will give us more flexibility in terms of the time that we want,  
13 might want to dedicate to it. And it might be short, or it might be  
14 long, but if we have it at the beginning, I think it will give the  
15 members of the subcommittee more flexibility and more of like an  
16 understanding that we don't have to rush through things  
17 necessarily. So, that's my request that we don't calendar rules at  
18 the end of the meeting agenda, but we can direct them towards the  
19 beginning of the meeting agenda where possible. We unfortunately  
20 had one Board member that had to leave and couldn't attend the  
21 whole discussion.

22 **MS. URBAN:** Thank you Ms. de la Torre. Anyone else have agenda  
23 items? I'm sorry to move along. It's just they are going to lock  
24 the doors on us.

25 **MR. LE:** No, no, no.

26 **MS. URBAN:** Okay. Alright. Thank you.

27 **MR. LE:** No, no, no. There's nothing here.

28 **MS. URBAN:** Alright, so thanks very much, Ms. de la Torre, and

1 thanks everyone for listening to the list and considering it. Mr.  
2 Sabo, may I ask for public comment on this agenda item?

3 **MR. SABO:** This is for agenda item 10, Future Agenda Items. If  
4 you'd like to speak on this item at this time, please go ahead and  
5 raise your hand using Zoom's 'Raise Hand' feature. It is still  
6 pressing \*9 if you would like to raise your hand that way if you're  
7 joining by phone. It's for agenda item 10, Future Agenda Items.  
8 Madam Chair, I'm not seeing any additional hands.

9 **MS. URBAN:** All right. Thank you very much. With that, we have-  
10 - we covered agenda item 11 out of order over lunch. So, we will  
11 move to our final agenda item, which is number 12, Adjournment.  
12 Before we do that, I would like to most sincerely thank everyone  
13 who's contributed to the meeting today, the Board members, staff,  
14 and all the members of the public who joined us, and those who  
15 commented, for their contributions to the meeting and to the  
16 Board's work. May I have a motion to adjourn this meeting?

17 **MR. LE:** I so move.

18 **MS. URBAN:** Thank you, Mr. Le. May I have a second?

19 **MS. DE LA TORRE:** I second.

20 **MS. URBAN:** Thank you Ms. de la Torre. I have a motion and a  
21 second to adjourn this meeting. Mr. Sabo, will you please perform  
22 the roll call vote?

23 **MR. SABO:** Yes. The motion is to adjourn. Board member de la  
24 Torre?

25 **MS. DE LA TORRE:** Aye.

26 **MR. SABO:** de la Torre, aye. Board member Le?

27 **MR. LE:** Aye.

28 **MR. SABO:** Le, Aye. Board member Mactaggart?

1           **MR. MACTAGGART:** Aye.

2           **MR. SABO:** Mactaggart, aye. Board member Worthe? Chair Urban?

3           **MS. URBAN:** Aye.

4           **MR. SABO:** Urban, aye. Madam Chair, you have four ayes and one  
5 not voting.

6           **MS. URBAN:** Thank you very much. The motion has been approved  
7 by a vote of 4-0, and this meeting of the California Privacy  
8 Protection Agency hereby stands adjourned. Thanks everyone.

9 (End of recording)

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